

Digitized by the Internet Archive  
in 2022 with funding from  
University of Toronto

<https://archive.org/details/31761114658776>













137

M-1

M-1

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 5 May 1993

# Journal des débats (Hansard)

Mercredi 5 mai 1993

**Standing committee on  
the Legislative Assembly**

**Comité permanent de  
l'Assemblée législative**

Organization

Organisation



Chair: Ron Hansen  
Clerk: Lynn Mellor

Président : Ron Hansen  
Greffière : Lynn Mellor





### **Table of contents**

Table of contents for proceedings reported in this issue appears on the outside back cover, together with a list of committee members and others taking part.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Ministry of Government Services, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Table des matières**

La table des matières des séances rapportées dans ce numéro se trouve sur la couverture à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et d'autres personnes ayant participé.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, ministère des Services gouvernementaux, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



# LEGISLATIVE ASSEMBLY OF ONTARIO

M-1

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 5 May 1993

The committee met at 1533 in room 151.

### ELECTION OF CHAIR

**Clerk of the Committee (Ms Lynn Mellor):** Honourable members, it's my duty to call upon you to elect a Chair. Nominations are open.

**Mr Norman W. Sterling (Carleton):** I nominate Mike Farnan.

**Mr Gilles E. Morin (Carleton East):** I second it.

**Mr Mike Farnan (Cambridge):** I very much appreciate the nomination; however, I would like to nominate Ron Hansen.

**Mrs Ellen MacKinnon (Lambton):** I'll second that.

**Mr Farnan:** I do appreciate the recommendation from my good colleagues.

**Mr Paul R. Johnson (Prince Edward-Lennox-South Hastings):** And you're going to decline your nomination?

**Clerk of the Committee:** You're declining, Mr Farnan?

**Mr Farnan:** I decline, but I appreciate very much the confidence my colleagues have shown in me.

**Mr Sterling:** Well, I'll nominate Mr Farnan for Vice-Chair.

**Clerk of the Committee:** Mr Farnan has nominated Mr Hansen as Chair. Are there any further nominations?

**Mrs MacKinnon:** I'll second that.

**Clerk of the Committee:** I declare the nominations closed, and Mr Hansen is declared Chair.

**Mr Farnan:** You don't know how close that was.

**Mr Morin:** It could have created havoc.

**The Chair (Mr Ron Hansen):** I take it Mr Sterling nominated me?

### ELECTION OF VICE-CHAIR

**The Chair:** I'd like to call for nominations of the Vice-Chair.

**Mr Sterling:** I nominate Mr Farnan for Vice-Chair.

**Mr Morin:** I second it.

**Mr Farnan:** I feel honoured that my colleagues would have that kind of confidence in me, and I accept.

**The Chair:** All in favour? Okay. Congratulations, Mr Farnan.

**Mr Farnan:** Thank you.

### APPOINTMENT OF SUBCOMMITTEE

**The Chair:** And the appointment of the subcommittee. Who might the subcommittee be?

**Mr Sterling:** Sterling for the Conservatives.

**Mr Morin:** Barbara for the Liberals.

**Clerk of the Committee:** And Mr Farnan.

**Mr Paul Johnson:** I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair or at the request of any member thereof to consider and report to the committee on the business of the committee; that substitution be permitted on the subcommittee; that the presence of all members of the subcommittee is necessary to constitute a meeting; and that the subcommittee be composed of the following members: Mr Hansen, Mr Sterling, Ms Sullivan and Mr Farnan.

**The Chair:** All in favour? Opposed? None opposed.

We have some business regarding standing order 108(b). The clerk is circulating a copy of the revisions to standing order 108(b). These revisions reflect the ministry name changes. Standing order 108(b) identifies which ministries fall under each of the four policy field committees for the purposes of standing order 125.

To update standing order 108(b), we need a motion to adopt and authorize me to present the report to the House and move its adoption.

**Clerk of the Committee:** On that document that I've just distributed, there's one correction. Under "administration of justice," it should be "the Ministry of the Solicitor General and Correctional Services."

**Mr Sterling:** Could I just get a clarification, Mr Chairman? Can you tell me what are the differences? Have any of them been moved, or is it just a matter of names?

**Clerk of the Committee:** It's just a matter of names.

**Mr Sterling:** I move it be accepted and reported to the House.

**The Chair:** Moved by Mr Sterling.

**Mrs MacKinnon:** I'll second it.

**The Chair:** Seconded. All in favour? Opposed? None opposed.

Okay, I guess that will be the business of the committee this afternoon. This committee is adjourned.

The committee adjourned at 1533.



## CONTENTS

Wednesday 5 May 1993

Election of Chair .....	M-1
Election of Vice-Chair .....	M-1
Appointment of subcommittee .....	M-1

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

- \***Chair / Président:** Hansen, Ron (Lincoln ND)
- \***Vice-Chair / Vice-Président:** Farnan, Mike (Cambridge ND)
- \*Johnson, Paul R. (Prince Edward-Lennox-South  
Hastings/PrinceEdward-Lennox-Hastings-Sud ND)
- McClelland, Carman (Brampton North/-Nord L)
- \*MacKinnon, Ellen (Lambton ND)
- Mathyssen, Irene (Middlesex ND)
- \*Morin, Gilles E. (Carleton East/-Est L)
- Owens, Stephen (Scarborough Centre ND)
- \*Sterling, Norman W. (Carleton PC)
- Sullivan, Barbara (Halton Centre L)
- Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)
- \*Wessenger, Paul (Simcoe Centre ND)

*\*In attendance / présents*

**Clerk / Greffière:** Mellor, Lynn

M-2



M-2

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 9 June 1993

# Journal des débats (Hansard)

Mercredi 9 juin 1993

## Standing committee on the Legislative Assembly

Role of the independent member

## Comité permanent de l'Assemblée législative

Le rôle du député indépendant

Chair: Ron Hansen  
Clerk: Lynn Mellor

Président : Ron Hansen  
Greffière : Lynn Mellor





### **Coat of arms**

A new coat of arms appears on the cover of Hansard. Presented to the Legislative Assembly of Ontario by the Governor General on 26 April 1993, it emphasizes the distinctive character of the Assembly and distinguishes the Assembly's identity from that of the government. It was created at this time to mark the bicentennial of the First Parliament of Upper Canada and the centennial of the present Legislative Building. Further information may be obtained by calling 416-325-7500.

### **Table of contents**

Table of contents for proceedings reported in this issue appears on the outside back cover, together with a list of committee members and others taking part.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Ministry of Government Services, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Les Armoiries**

Les nouvelles armoiries paraissent sur la couverture du Journal des débats. Présentées à l'Assemblée législative de l'Ontario par le gouverneur général le 26 avril 1993, elles soulignent le caractère distinct de l'Assemblée et mettent en valeur l'identité de l'Assemblée par rapport au gouvernement. Les armoiries ont été créées en ce moment pour marquer le bicentenaire du premier parlement du Haut-Canada et le centenaire du présent Édifice de l'Assemblée législative. De plus amples renseignements sont disponibles en composant le 416-325-7500.

### **Table des matières**

La table des matières des séances rapportées dans ce numéro se trouve sur la couverture à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et d'autres personnes ayant participé.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, ministère des Services gouvernementaux, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 9 June 1993

The committee met at 1614 in room 151.

## SUBCOMMITTEE REPORT

**The Chair (Mr Ron Hansen):** We'll bring the standing committee on the Legislative Assembly to order. I'd like to report on the subcommittee meeting.

**Mrs Barbara Sullivan (Halton Centre):** On a point of order, Mr Chairman: Do we have concurrence that there be no representation from the Conservative caucus?

**The Chair:** That's correct.

"Your subcommittee met on Wednesday, June 2, 1993, to consider the committee's schedule of business and committee budget, and has agreed to recommend:

"1. That the Chair, a member of each caucus, and the committee clerk attend the National Conference of State Legislatures annual meeting, July 24 to July 29, 1993, San Diego, California; and

"That a request seeking authority to do so be sent to the House leaders.

"2. That the attached 1993-94 committee budget be approved and that the Chair be authorized to present the budget to the Board of Internal Economy."

Can I ask a mover on the two items, number 1 and number 2?

**Mr Mike Farnan (Cambridge):** I will.

**The Chair:** Mr Farnan has so moved. Any discussion? All in favour? Any opposed? Carried.

## ROLE OF THE INDEPENDENT MEMBER

**The Chair:** I'd like to now welcome Mr Will Ferguson.

**Mrs Sullivan:** On a point of order, Mr Chairman: As we only have two of the independent members of the House available to be with us today, I would like to place a motion before the committee with respect to the times, that we will ensure that there's equivalent treatment of all the independent members as they appear before us.

I would like to move that each of the independent members be asked to address us formally for 20 minutes and then to allow 10 minutes for questions and answers, or to divide the 30-minute time as they see fit.

**The Chair:** Fine. Any discussion on the motion?

**Mr Farnan:** I see Barbara's point, but depending on the individual member, someone may speak for five minutes and leave it open to questioning, and another individual may feel they want to put on record a statement that's 30 minutes long. Maybe we should be a little bit flexible in that way.

**Mrs Sullivan:** I think that was the intent of the

motion. My basic recommendation is 20 minutes plus 10; however, 30 minutes as the independent member sees fit.

**The Chair:** As the total amount of time, just the same as delegations who come before us.

**Mrs Sullivan:** Precisely.

**The Chair:** The Chair usually says, "Can you leave some time at the end for committee members to ask questions?" but there are some delegations that take the full 30 minutes. No one's opposed to Ms Sullivan's motion?

**Mr Gilles E. Morin (Carleton East):** Just to make sure also that once we've listened to the two witnesses, the meeting ends there; in other words, I think we should hear the three witnesses before we start debating or discussing. If discussions were to be held, I would suggest that these discussions be held in camera.

**The Chair:** Agreed upon?

**Mr Farnan:** Absolutely.

**The Chair:** Anybody opposed? Fine.

There wasn't anybody opposed to Ms Sullivan's first motion, so that was carried.

I'd like to welcome you, Mr Ferguson. We have 30 minutes, from 20 after 4 until 10 to 5, and then Mr Sola will be on after that.

**Mr Will Ferguson (Kitchener):** Thank you very much, Mr Chair. I guess I'd better make this good, because this may be the only opportunity I get this year to speak at a committee meeting.

First of all, I'm going to try to be very brief and very succinct. I think everybody is well aware of the issue that I and a couple of colleagues face with respect to the rules of the Legislative Assembly and the standing orders.

I, much the same as each one of you, was elected back in September 1990 to do a job. I can't help but feel that, given the turn of events that have taken place, I am not doing the full job I was elected to do.

I think we all recognize that life's path and life's road can take many different twists and turns. Some things we have control over; other things we have to learn to tolerate, over which we have no control. That's how I feel at the moment. I'm in a situation over which I had absolutely no control. As a result of being in a situation over which I had no control, circumstances dictated that for a, hopefully temporary, period of time, I would sit as an independent member of the Legislature.

I think we all fully recognize that the rules established for this Legislature, in fact for most legislatures



across the country, are rules that are there to effectively serve party democracy, within the party system, within the parliamentary system.

I can't help but think that it is most unfair, most unjust, that an individual who represents 85,000 people in this province finds himself or, as perhaps a future case may be, yourself, in a situation where they effectively have a vote but no voice on behalf of the individuals they may represent.

Let me tell you, it's very difficult to explain to one's constituents why you cannot speak on their behalf when it comes to either members' statements or voicing concerns on behalf of constituents at a committee meeting, a forum like this. They certainly don't understand the legislative process or the rules, and I think the general consensus out there is that if the existing rules dictate that one has no voice, even though one is duly elected, then the rules ought to be changed.

1620

I think our *raison d'être* is to represent the views of the individuals we're here on behalf of. In any policy or any decision or any discussion that takes place, I really think you're removing the fundamental tool of expression by not permitting some kind of allowance for those individual members who either find themselves sitting as independents or, in other circumstances, choose to sit as an independent member.

I would suggest that a member's statement and a question, perhaps once every three to four weeks, prorated, perhaps, concurrent with the number of opposition and third-party members and government members, would (a) not be inappropriate and (b) not be a severe time constraint. I think, if we're going to be honest, we witness in this place a lot of wasted time on a lot of really mundane issues. Again, my constituents see that and they say, "Why would an elected member be permitted to debate government process or the rule process and you, in turn, are not permitted," with the exception, I guess, on second reading of a bill, "to be engaged in the process of government?"

Most of us recognize that being able to speak and being able to put forth the views that, presumably, elected members represent on behalf of the collective wisdom of their communities is a very important part of the government process.

Those are my remarks and those are my thoughts on the matter.

**The Chair:** Okay. Any questions from the committee?

**Mrs Sullivan:** I'd like to know, Mr Ferguson, whether, in your view, there ought to be different rules dependent on the way one becomes an independent: whether one is an independent at election time, when one puts oneself forward as an independent; whether one is an independent by choice, having removed

oneself from a caucus environment; or whether one is an independent by request, when that has been made.

**Mr Ferguson:** I think I could advance a very strong argument on one—I think what you're asking here is whether one is in control of the situation or one isn't in control of the situation. Obviously, the member from Victoria-Haliburton is very much in control of the situation, as a conscious decision to sit as an independent for reasons that he expressed at that time.

I don't think I was particularly in control of a situation. There are external forces out there over which I had no control, for just about two years of my life now, that I think forced me into this particular role I'm in today. It's not a role I decided to play, necessarily; it's a role that I really felt I was forced into more than anything else.

So I think it'd be most unfair to say—I don't know if this committee or any committee would want to sit in judgement of whether somebody's in an independent role as a result of being elected here originally, as opposed to ending up in an independent role because of a decision that individual makes later on in the life of the government or in the life of the opposition or in the life of the third party. Let's face it, there could be defections on either side of the House at any time.

I really don't think it would be appropriate to say you're going to apply one set of rules for one individual depending on the situation, because there are just too many variables out there that I think the Legislature would have to contend with. What's important is to provide some kind of forum so that people who find themselves, either by choice or by circumstance, in my position would be able to still participate in the day-to-day process.

**Mrs Sullivan:** I think the thrust of my question was based on some of the remarks you made with respect to your constituents understanding your role now as a member. It seems to me that when an independent member is elected with a mandate from his constituents in the first place, there is a different comprehension and understanding of the role of the independent member and a different expectation than there would be when the independent member has become independent perhaps not by choice or perhaps on a matter of principle.

I'm also wondering, because you raised the issue, what kind of reporting or accountability you see to your constituents in other ways than through House activity now that you are an independent.

**Mr Ferguson:** I am still providing all of the services that I was providing, of course, as a member of the government. That has not changed in fact.

**Mrs Sullivan:** And you are funded to do that.

**Mr Ferguson:** Yes.

**Mrs Sullivan:** Thank you. I just wanted that on the

record, Mr Chairman.

**Mr Ferguson:** That certainly has not changed.

**Mr Paul Wessenger (Simcoe Centre):** I just have a question in that it seems like the role of an independent—

**Mr Ferguson:** If I can interject just for one moment, I want to address Mrs Sullivan's first comment. It seems somewhat inconsistent to me that if members of the Legislative Assembly decided to leave the government party and cross the floor to the Conservative Party, they wouldn't lose any privileges; if they decide to leave the official opposition and sit as a government member, they don't lose any privileges; if they decide to leave the official opposition and sit as a Conservative, they don't lose any privileges; but immediately upon pulling out of one of the party's ranks, quite a bit is lost, and that's where I think the unfairness comes into this particular situation. Sorry, Mr Wessenger.

**Mr Wessenger:** My question relates to the fact that if we look at our political process, it's very much oriented towards political parties having primacy and that's the way the rules are based, in the interests of the political parties: the government party and the opposition parties. That has, undoubtedly, some limitation on the role of members in the House of all types, whether they're government members or whether they're independent members.

Would you favour the committee looking at, rather than just the role of the independent member, the role of the member per se, equality between members with respect to privileges, as distinct from the way it is now, so dependent upon the political decisions of the political parties? Do you think we ought to enhance the role of members individually to make them more equal: independent members and members of recognized parties?

**Mr Ferguson:** I certainly wouldn't have any difficulty with that. You can slice it or package it any way you want to—and what we're talking about, essentially, is the packaging. So if that's the way the committee would like to decide the issue and rationalize it, that's fine, but I do think that in this one instance we could look to Ottawa and how the federal Parliament has treated independent members, which for the most part I think is pretty just and pretty fair.

1630

**Mr Wessenger:** So you'd be willing to be treated equal to other members on that basis, not to have any more rights but just to have the same opportunity as other members of the Legislature would have with respect to the question of making statements and questions, and then, as you say, debate is an interesting aspect.

Just to move to one other aspect, I think there are a lot of difficulties with respect to the whole question of the role of an independent member concerning commit-

tees, but at present, of course, you have the right to sit on any committee, with a voice, as I understand it, as an independent member. Do you think that is a sufficient—

**Mr Ferguson:** Yes, although I think the independent member would have to be limited, obviously, in the number of committees. I don't think it would be particularly fair that independent members would be able to slide in for key votes on key issues.

**Mr Wessenger:** No, I'm just asking. You see, in the present system, you wouldn't have a vote; you'd only have a voice.

**Mr Ferguson:** Yes.

**Mr Wessenger:** And is that satisfactory to you?

**Mr Ferguson:** No.

**Mr Wessenger:** It isn't.

**Mr Ferguson:** No.

**Mr Wessenger:** Okay, do you have any proposals with respect to how that would be dealt with, incorporating independent members into the committee system?

**Mr Ferguson:** If you adopt the principle and you think the principle's fair and just, then you can work out the mechanics. So I would suggest that independent members ought to have a voice and a vote on committees and it ought to be the committee of their choice. I don't think that that is unreasonable.

**The Chair:** I'm going to go on to Mr Turnbull, and at the very beginning I should have explained why these hearings were going on, because of people viewing—I just went on to Mr Ferguson—but I'd like to go on. It's the role of the independent member we're talking about, and Mr Charlton moved in the House that the standing committee on the Legislative Assembly be directed to consider the role of members of the provincial Parliament who are not members of a recognized party, that the committee give particular attention to issues relating to non-aligned members posing oral questions, making members' statements and participating in standing committee process, and that the committee in its deliberations consider the rights of all members and the practices of other jurisdictions. So I think that pretty well covers it there. We'll go on to Mr Turnbull.

**Mr David Turnbull (York Mills):** I wonder if you could just outline briefly, as you see it, what exactly you would recommend that the committee should put forward.

**Mr Ferguson:** Well, I think I've done that in my presentation, but just to recap—

**Mr Turnbull:** I regret I came in after the beginning of the presentation.

**Mr Ferguson:** Just to recap, I've suggested that independent members ought to be able to make members' statements in the House, on a prorated basis, obviously, with numbers that are concurrent with the opposition, third party and government members. So of



course they wouldn't be able to make a statement every day, but I would suggest that, the way the numbers work out, once every three or four weeks would not be inappropriate. I think independent members also ought to be permitted to ask questions as well as participate fully in the life of a committee with a voice and a vote, for a number of reasons which I'm not going to repeat but I think are pretty obvious to most of us sitting around this table.

**Mr Kimble Sutherland (Oxford):** Mr Ferguson, I guess I want to ask you how you would propose that being done. Would you see members' statements in those questions occurring within the allocated time, the 15 minutes or the one hour, or would you want, if you worked it out on an average, say, that the Speaker's discretion would allow an independent to say it after the 15 minutes so that wouldn't be cutting into any other member's time, and then at the end of question period allow you to ask one question that way? Do you see something along those lines, or—

**Mr Ferguson:** I think either of those suggestions is workable, but if you're asking for some fine-tuning of it—first of all, for a member's statement, adding another 90 seconds to the clock on a daily basis certainly isn't going, to any extent at all, to change any of the circumstances in this place. Questions, of course, might be a little longer, but I would suggest that it should be at the discretion of the Speaker—again, prorated.

I understand that in the federal House the independent member approaches the Speaker's office directly and advises the Speaker that he or she has a question that he or she would like to put forth. The Speaker—I don't know if they keep a score card of this or a logbook or a date book or what they do. But on a regular basis, I think it's every three or four weeks, the independent members are then permitted to put their question and are recognized. So you could add additional time to the clock. I don't think that's going to any extent to affect the life of this place at all.

**Mr Sutherland:** Can I just ask, are you allowed as an independent member to place a written question in the notices and proceedings?

**Mr Ferguson:** I can't say for sure, but I think I am.

**Mr Sutherland:** Okay. So there is—

*Interjection.*

**Mr Sutherland:** Yes? Okay. Just to have some clarification on that—

**Mr Peter Sibenik:** Yes. Any member of the House can place a question.

**The Chair:** Do you want to identify yourself?

**Mr Sibenik:** Yes. I'm Peter Sibenik. I'm the procedural clerk, research, and the member is quite right, that he can place a written question, as he wishes.

**Mr Sutherland:** Okay. So there is some opportunity

through that method available, but obviously, I guess that's not necessarily the same as having it in Hansard or being able to respond—

**Mr Ferguson:** I'm sure you'll understand, Mr Sutherland, it doesn't read as well.

**Mr Sutherland:** Yes, I certainly do. That's all I have for now.

**The Chair:** Any other questions from committee members here? Are there any other points you wanted to bring forward, Mr Ferguson? The three House leaders had met and had talked to the Speaker on some way of proceeding, like the number of times sitting on a committee and the number of times asking a question. Can you give the committee some of your thoughts—that when they are deliberating—to hear what you have to say and the other independent members, so maybe there's some idea that each are looking at a question every so often or what kind of process? Did you think of any of that before coming before the committee or are you leaving it up to the legislative committee to come back with some solutions?

**Mr Ferguson:** I think there have been some precedents established across the country with respect to this matter, and we're not breaking new ground here. This has been an item of discussion in other jurisdictions and I think they've come to a compromise and a resolve on the matter in most situations. So I would really rely on the past experience of other jurisdictions.

I think most people have a sense of fair play—what is appropriate and what is inappropriate. I think they wouldn't feel it would be appropriate to let independent members ask questions on a daily basis; however, I don't think it's inappropriate that once every three or four weeks an independent member be permitted to ask a question, particularly concerning his or her constituency. I think they think it would be inappropriate to get up every day on a member's statement but I don't think it would be inappropriate to add another 90 seconds to the clock, even if the matter is prorated among the independent members. I think that might be a solution to some of the problem.

So I think we could encourage people to work together on this, particularly the independent members who face somewhat of a unique problem in this Parliament, and perhaps it would be in our best interests to advise the committee collectively of what we think might be workable. But these are not insurmountable difficulties or they are not far-reaching solutions to what I consider a relatively simple problem.

**The Chair:** Why I brought it out—because sometimes, not being independents, we might view some of the issues a little bit differently, that we don't see that you've lost—you know what I'm saying—what we see in the House, but there could be other areas that you've lost out on. So I was just asking a general question. I'm

going to go to Mr Sutherland.

**Mr Sutherland:** You mentioned the term "prorating." Can I just get what you mean by the term "prorating?"

1640

**Mr Ferguson:** Let's deal with questions, first of all. The second and third parties of course have questions and that's decided upon, given the number of seats that they have. There is a formula that's used for that, I understand. I think independent members, if we rotated—we now have three—one question a week per independent member, prorated on that fashion, most of the government members and the Liberal and Conservative members—there are 12 members' statements a week, so I think, if you prorated how often one would get to make a member's statement in the session of Parliament, that we could prorate using the same factor to—

**Mr Sutherland:** So you'd be saying prorating on the basis of the number of times the average member gets to make a statement or the number of times the average member gets to ask a question?

**Mr Ferguson:** I can't speak for the other independent members, but I would think that would be a fair way to approach it.

**The Chair:** Any other questions from the committee?

**Mr Turnbull:** I wonder if you put your mind to the thought of the question period in the sense that it certainly—and opposition parties, say the third party, do not get a prorated amount of the questions. They could have one person fewer than the official opposition, but they will not get a greater amount, even though they're—what I'm really saying is that the government gets its shot at questions, but you're talking about the proration. Irrespective of the way the government and the official opposition parties are divided up in terms of votes, you'd be just going on the proration for questions, as well as statements?

**Mr Ferguson:** I would assume that—and, again, I think we would have to check Hansard to work out the averages here—the government would get probably anywhere from five to eight questions on a good week. Obviously the Conservative Party—the third party—and the official opposition would have a lot more questions. But even on five to eight questions in a good week, over a month I think there would be an average or some type of factoring that could be worked out, based on the number of members in not only your caucus, Mr Turnbull, but in the Liberal caucus as well as the government caucus.

**Mr Turnbull:** And based on the number of questions that we got on average.

**Mr Ferguson:** Yes. So I think it's more of a time problem that requires a time solution.

**The Chair:** Any more questions from committee members? Are there any closing remarks you'd like to make, Mr Ferguson?

**Mr Ferguson:** No. I'd just like to thank the committee members for their time. It's a pleasure being here. You're doing a heck of a job on behalf of Ontario.

**The Chair:** Okay, thank you, Mr Ferguson.

The next independent member is Mr John Sola. Welcome to the committee. We'll have half an hour, Mr Sola, and you can divide it up, as Mrs Sullivan said, in any way you would like to.

**Mr John Sola (Mississauga East):** I'll try not to be too long so that we have more question-and-answer sessions. But I'd like to thank the committee for moving so quickly to hear this case. I'd also, at the same time, like to thank the Speaker for taking action so quickly, because I was pleasantly surprised, when I had a meeting with him a short while ago to discuss this, after he had had meetings with all three House leaders and the three chief whips, and he told me that all three parties were very cooperative and sympathetic and that they were acting in good faith in trying to give the growing number of independent members a say in the House without really upsetting the apple-cart as far as giving them a privileged position vis-à-vis the back-bench people of the regular parties. So I understand what the problems are in the parties giving up their time to let independent members speak, but I think it's very important for independent members to get a chance to speak.

It probably hasn't affected me as much as most people, because I've concentrated more, in my almost six years in the House, on the constituency, rather than the House, aspect of being an MPP. So, as Ms Sullivan raised the question whether that aspect of our functioning has been affected: not at all, because our funding is the same; our staff is the same. The only thing I've been cut off from is the research people of the Liberal Party, but I still have the legislative research to go to and I still am able to function normally in my constituency.

I think one of the reasons that this is an unusual case in Ontario is that we have had so little experience with independent members. In Europe this is much more commonplace because a lot of them run independently and, with the proportional representation over there, they have a lot of situations where there is only one member of a certain party sitting in the Legislature at any one time. But here, because we have usually had fairly strong parties, we've probably overlooked it. It's probably an oversight, not an intentional slight for independent members.

But the situation may arise where you can wind up with one party electing only, say, 10 members, and according to our rules here and on Parliament Hill, if



you don't have 12 members you're not recognized as a party. So it would affect the composition of committees. It would affect a lot more of the general voting public in Ontario if we don't come to grips with this because, from my reading of the public, they seem to want a little bit more independence from their members, whether they belong to a party or not. Eventually, I think we'll have to face this problem and come to some sort of solution.

From my meeting with the Speaker I found a couple of the points of agreement that the parties had reached very comforting: the fact that every three or four weeks, according to my understanding, the independent members would be able to raise a question in the House and that every three or four weeks they'd be able to make a statement in the House and it wouldn't be taking time away from the three parties. It would be just slotting in an extra statement or an extra question at the end of the time frame. I found that a bit comforting.

As far as questions are concerned, I think there are two types of questions. There are those that affect the province as a whole and those that are a bit more concentrated and focus more on certain constituencies. The province-wide questions are more appropriately handled by the parties, but I think if something affects your constituency, you should be able to speak out on that matter. I think somehow you have to take that aspect into consideration in your deliberations.

In my case, because in my area there are four MPPs, the problem would probably be raised in the House anyway, but in certain areas you may be far removed. For instance, if one of the far northern members happened, by some circumstance, to become an independent and the nearest MPP is 300 or 400 miles away, you'd have a vast territory that would not have their concerns raised in the House, so I'd like to bring that to your attention.

I think the big issue here is to balance giving independent members some say in the House with fairness to the backbenchers of all three parties. Having sat in the House when the party I belonged to at the time had 95 members, I know how difficult it is for members in a large majority government to get to have their say in their House, whether it's asking a question, whether it's making a statement or whether it's participating in debate.

I would prefer for myself if I could participate in certain parts of the debate, for instance, on the budget, on the throne speech, on some of the more important bills. I wouldn't expect to be able to have a share of the debate on every bill that comes up before the House because that would be taking too much time away from the people who belong to parties.

But something as important as the budget or the throne speech or some of these very touchy issues, like Bill 40 in the last session and Bill 164 in this session,

I think my constituents would want to know some of my ideas, especially now that I can no longer say that, you know, my ideas have been expressed by somebody in the same party, by the official critic or somebody else.

**1650**

I think that aspect has to be there, because one of the problems being an independent is you can't prove to your constituents what you are doing, unless they're in trouble and they come to your office and you have to help them out in the office. You know, the ones you have meetings with, who make appointments that you do something on, they have proof that you have either done something or attempted to do something, that you've met with them, that you have listened to their concerns, that you have tried to alleviate their concerns.

But most of the constituents have no need of coming into your office, so they're looking for some way of seeing that you are representing them and their points of view in the House, and the only way they can do that is to look up whether you've made a statement, whether you've asked a question, whether you've participated in debate.

As I say, I understand the problems that backbenchers have because I had them all through my six years here, but I was always able to say, "I belong to such-and-such a party and the official spokesman for the party"—whether it was a party leader, whether it was a party critic, whether it was somebody who had a similar point of view in the party—"expressed my points of view." Now as an independent, I think that would no longer wash and I would have to be able to explain that I have stood up and expressed the concerns of my citizens in the House.

That's all that I wanted to say. Oh, one other thing. In this letter from the Speaker, I see where he has mentioned private members' hour. Apparently there was some difficulty in giving independent members participation in private members' hour, that it was reserved specifically for party members. I found that ironic and contradictory, because, as I say, I've been in the House for six years and my name came up once where I was actually able to bring something before the House. By the way, it was defeated by one vote. So it's difficult enough getting on.

I find it a little disconcerting that if you, through your term, become independent, for whatever reason, that you would be taken off the ballot. If you insist on doing that, then I think you should change the name of private members' hour into party members' private hour, because otherwise you're contradicting yourself. I would have thought that the one avenue open to independent members would be private members' hour, and as of right now that has been closed. I'll close with that and I'm open to questions.

**Mr Morin:** I'd like to pose my question immediate-

ly because I have to replace Noble in the chair. My question's going to be very brief. Where do you feel, Mr Sola, the area that your constituents are missing the most since you are now an independent member?

**Mr Sola:** It's difficult to say right now because I've been an independent for such a short period of time, but the question has been raised in the media in Mississauga, and at the various functions that is raised. People have said, "Okay, now that you're an independent, how are you representing us?" I've told them that in the House it'll be more difficult. I haven't really spoken to people since my meeting with the Speaker. At that time I said, "When I meet with the Speaker, I'll find out what options are available to me, how often I'll be able to speak in the House."

But I've been able to refer to my record in my constituency work and say, "That part is unaffected," and that part I will be able to do maybe even better, because now I'm no longer tied into caucus meetings in the morning or into committee meetings like this, so I can actually schedule constituency meetings in the mornings on days when I normally would have been at Queen's Park. So in some ways the personal touch will be more effective right now as an independent member.

**Mr Turnbull:** Mr Sola, you heard what Mr Ferguson had to say. Would you differ from his proposals in any way?

**Mr Sola:** I understood his proposals to be a rephrasing of the proposal that the Speaker gave me at the meeting. I forget what terminology he used, but the Speaker mentioned something about the way they've figured out the role of the independent member, at the meeting with the three House leaders and three whips, would be that on average a question would come up every three or four weeks and a statement as well.

Probably, I think, they're more open to statements being added on than questions because question period has really been cut down by the lengthy preambles. I remember when in the last session the official opposition would get up to seven questions in a hour and I think now it's down to about three or four.

**Mr Turnbull:** Let me ask you something. This is just my understanding and I may not be correct on it, but my understanding was that, when the Tories were the government, it was quite unusual for members of the government back benches to ask questions because they had access to ministers at all times and so they didn't take up question period unless there was something absolutely pressing which had to be on the record.

You have been in the position of being a government backbencher and you reflected on the fact that you didn't feel that you had enough time to ask questions, but would you not say it's reasonable to accommodate independents more in this way and perhaps take this away from the government members' ability to ask

questions since they have direct access to ministers?

**Mr Sola:** On principle, I agree with you, because I found it quite uncomfortable, to tell you the truth, when I was a government member when members of the caucus would pose self-serving questions to ministers, sort of pat themselves on the back. That's why it bothers me now that I'm in opposition, for the same reason.

Now, when there's a legitimate question, when there's a good question, when there's something hot brewing in your constituency and you can't prove to your constituents, other than by asking a question publicly in the House—it doesn't matter which side of the House you sit on, you should be able to pose that question.

Our party was probably just as guilty. I don't know about the PCs because I wasn't in office when the Conservatives held sway over the province, but I would suspect that most government questions are just opportunities to allow a minister to elaborate on a program or a bill.

**Mr Turnbull:** I've always been somewhat perplexed at the fact that a minister was able to read off essentially a statement by way of an answer to a question, which obviously shows that it's a setup question, which is just stalling the activities of question period. That was the thrust of my question, so indeed you've confirmed that you believe that is the case.

**Mr Sola:** Yes, and as I say, when I was in government, I was one of those who was not particularly anxious to ask those sorts of questions. When I asked questions, it was because I felt sincerely that there was something in my constituency that needed a response and that needed a public response and that needed a quick response, because going through the mail, even going to your own minister sometimes, took time, whereas if you could get up in the House, you could get at least some sort of temporary statement until they checked into it and came back with a fuller statement later on.

**Mr Paul R. Johnson (Prince Edward-Lennox-South Hastings):** Mr Sola, you've made some very interesting comments, some very good ones, I must say. Just to follow up along the conversation as we've been speaking, or at least as you've been interchanging with Mr Turnbull, I think it would be wonderful if all the questions that were posed to the ministers were actually written out ahead of time. Then you could get an absolutely correct and proper response to your concern, whereas right now we know that if we're in opposition—I haven't been there—I would suspect that there's a certain glee in being able to pose a question about a certain subject matter that the minister will have little or maybe no knowledge of.

I don't know that has a whole lot of merit, except to



point out that the minister has little or no knowledge of the question. If sincerely, and I think we all want to get to the bottom of all the concerns we have with regard to our constituents or others in the province of Ontario, I think a well-written question with a well-documented, well-written answer would be appropriate. But that's another issue.

I was very surprised when you said that you lose your opportunity for private members' public business, because if in fact that's so, I think that if we're all equal in the Legislature, and I know we're not, but up to a certain point, we certainly are all equal. That in essence is a lottery. You put your name in a hat, literally, and the names are drawn. I think that would be certainly one thing that individual members should have a shot at, regardless of whether they belong to a party or sit as individuals separate from a party.

**Mr Sola:** I agree with that, and especially I think an independent should also be allowed to speak during private members' hour, because I was surprised when I found out that not only could I not partake in the lottery, but I could not partake in the speaking rotation. Apparently, I can in the House during normal bills once several rotations go around, but during private members' hour, that has been eliminated for the time being. Maybe that's one thing you can correct.

**Mr Paul Johnson:** Also, I'd like to say that the perception that government members, and I don't mean cabinet ministers but those members of the government party who are not cabinet ministers, have as much opportunity to speak or more opportunity to speak or more opportunity to get answers from the cabinet ministers—I think there's a perception there that this happens or can happen, and I don't know that it's necessarily so, especially not with regard to time in the Legislature directly.

I think that given the numbers, if there's a wide variation in the number of members, then as you divvy up the time among your caucus members, certainly the more members you have in your caucus, the less opportunity you're going to have to speak. That's something that I find unfortunate from my own perspective.

**Mr Sola:** I agree, and that's why I was pleasantly surprised when the Speaker told me that all three House leaders were very sympathetic and cooperative in trying to come up with a fair deal for the independent members. I think there has been a trend to create more independent members within the party, sort of to make the backbencher—how would I express it?—to give the backbencher more power, to take away the party whip on a lot of issues.

I think if we could somehow solve that problem, then it would be less of an intrusion in giving independent members more say as well. If the backbenchers of each

party somehow were able to get away from party discipline except on very important matters that could bring down the government, I think then they would feel less aggrieved if independent members were able to get their turn to speak as well.

**The Chair:** Mrs Sullivan, we've got about 10 minutes left and we've got four questioners.

**Mrs Sullivan:** I suspect, just before I move to the question, that the Speaker's explanation about private members' hour not being available to you now is that the lottery has taken place for the entire session, but my understanding is that all members are included in the lottery, whether they're independent or not, when the lottery occurs. We certainly should have a clarification of that and what if any intent the Speaker had with respect to participation in the lottery.

The question of the rotation is in the rules, so that would have to be dealt with.

The question I wanted to ask, though, is with respect to a proposal that's been made that the Speaker would have an opportunity to make a determination as to whether an independent member could or should proceed with a question. It seems to me that a question in the House is supposed to be a matter of urgent public business.

Therefore, pro rata—you have a question on December 13—is inappropriate because there may not be a matter of urgent public business in your constituency or in the province that you want to bring forward on that particular day. However, on another day, there may be a chemical spill or another issue that you feel has to be brought to the House. How do you feel about the Speaker vetting your question?

**Mr Sola:** As I say, there are two types of questions: one that's province-wide and one that's more concentrated on the constituency.

If it's province-wide, then as an independent, why should I have the opportunity, even if it happened, even if it's concentrated in my riding? I think it's more appropriate, probably, for the leader. As a matter of fact, if I were a party member, if it was of real provincial importance, either the critic would be raising the question or the leader. Probably the leader if she was in the House.

From that aspect, I wouldn't have any problem, but there are certain things that come to light and that are not widely known. It depends on how active you are in your community. You get certain sources of information and things that have to be raised quickly while they're still hot.

Then I would find it difficult if they said, "You asked a question last week, and because there are two other members, you won't get on until six weeks from now." Then I would have difficulty with that, but under normal circumstances, no.

**Mr Turnbull:** Let me just go through this list that I've made. I understand you want to be able to make statements on a pro rata basis, to ask questions on a pro rata basis, and you've reflected on what Ms Sullivan asked you about the urgency of the question, and I think that would be an important consideration.

Mr Ferguson asked to be able to sit on one committee of that member's choice, and I take it that is also what you're asking.

**Mr Sola:** Having sat on many committees during these six years and having subbed on many, I find it a refreshing break right now, to tell you the truth, but yes, I would appreciate it if this extended over a longer period of time, being an independent, that I would sit on a committee.

**Mr Turnbull:** One of your choice.

You mentioned joining in debate on what you consider to be important legislation, and also you used, for example, the budget. I wonder how the Speaker would determine what was important or not. That could be quite a subjective judgement.

**Mr Sola:** As I said, there are certain topics that have province-wide implication and the budget is one of them. Normally, I think, as an independent, he probably would like to overlook you because everybody wants to get in on the budget debate, but that's one thing where I would like to get my two cents' worth in.

**Mr Turnbull:** So would I as a matter of fact.

*Interjection.*

**Mr Turnbull:** It has been cut off indeed.

**Mr Sola:** But there are other events that may not be important from a provincial perspective, but may be from a regional or a strictly narrow constituency perspective. I think the determination would be my own as far as the narrowness of the topic is concerned, and the other ones could just be decided: budget, throne speech; the other ones would probably have to come under some sort of special consideration.

**Mr Farnan:** There are a couple of things I want to entertain a dialogue on. One is, is prorated participation for an individual member, an independent member, really preferential treatment?

I put it to you on this basis: As a member of a caucus, as a backbencher, I can recall that I would go to our caucus meeting and there was a discussion among caucus as to the questions that might be raised. You have critic responsibilities and you argue your case within caucus, but clearly within the caucus there are individuals who have a more predominant role. There's the leader who obviously, clearly has the vast majority of questions, and that's written in, and then the backbench questions.

There are some critic areas that lend themselves more to direct questioning, and then there are critics holding

responsibility for what might be considered minor portfolios. Some of these critics get on very rarely in fact, and what you would then be saying if you had a prorated application is that you would in fact be giving an independent member a greater ability to ask a question than a minor critic within a party.

How would you respond to that?

**Mr Sola:** As I mentioned before, even a minor critic within a party can always say that the question has been raised by the party leader, by one of the major critics or by a backbench member of that party, and I think your constituents would buy it. As an independent member, you can no longer say it, even though you can say you're independent NDP or you're an independent Liberal or an independent PC. It doesn't wash as well.

**Mr Farnan:** I would entertain some further examination of that, John. As a critic, and you were a critic, you know that you become very knowledgeable in your field, and there are a multitude of questions you want to ask, but because of the dynamics of a caucus, you can't get those questions on. It's true that if it's a very important issue the leader may carry the ball, but there are plenty of other issues going on at the same time so that if any good critic says, "Gee, I want to get this out there," in fact, effective critics then simply have to ask the question and put it on the order paper.

I would say that it would be a very poor critic who didn't have a slew of questions he wanted to get on, and that critic may have less opportunity to speak than an individual member. In addition to which, you're saying that the individual independent member can concentrate on his local area, on local issues, without the encumbrance of a critic's role.

I would suggest to you that a prorated application is indeed preferential treatment for an independent. Now, I'm not saying there shouldn't be opportunity for the independent member, but if we're talking about a fair application, maybe prorated isn't exactly what we should be looking at, but that's something we should discuss later.

The second point I would like to make—

**The Chair:** Mr Farnan, we're running out of time. There's about one minute and I'd like to give Mr Sola a wrapup, if he wants one minute there just to wrap up.

**Mr Farnan:** Mr Chairman, I think this is very important.

**Mr Sola:** I've wrapped up so I'll give my minute to Mike to make his point.

**Mr Farnan:** You struck a raw nerve with me, John, and I say this in friendship because I respect you. You talked in some rather pejorative way about questions that might be asked by a government member. I've been in the House for six years, like yourself, and I've heard good questions from government members and good questions from opposition members. Likewise, I've



heard poor questioning on all sides of the House. I suspect that with independent members having the opportunity to ask questions, there will be good and bad questions.

It is wrong to presume, in my mind, that because a member on the government benches or opposition benches gets up with an issue, a local issue that may not be of interest to the members, that's not a highly important issue for that local member. It is wrong to presume that because a government member gets up and asks for clarification of what might be a very important government program, that's not a very important question to the public of Ontario in terms of information etc.

Maybe you didn't intend to give that slant to your

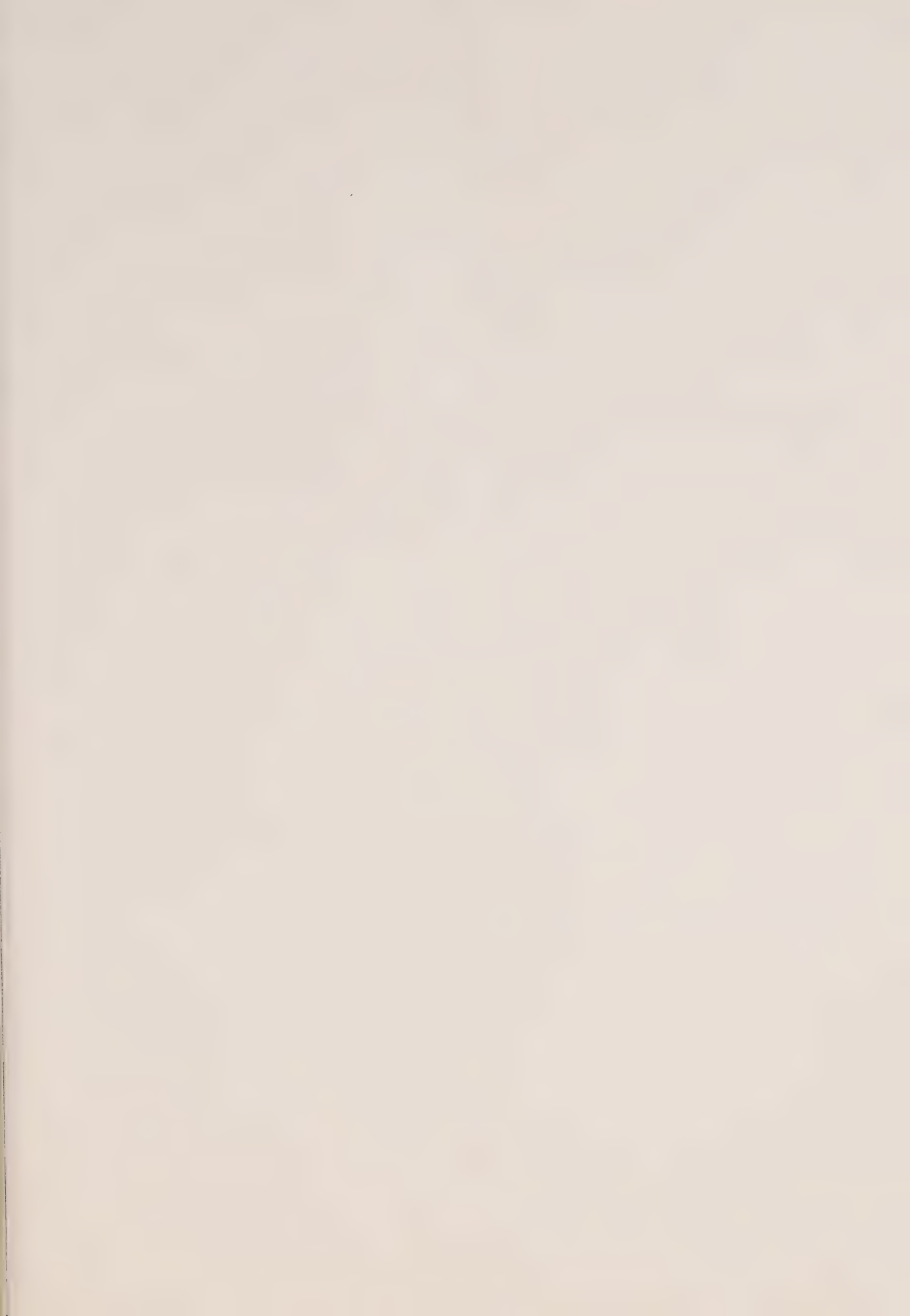
remarks, John, but I feel that in a non-partisan manner, questioning on all sides of the House has a purpose, and often for the questioner himself, it may be important to him and his constituency, but there are a variety of reasons why questions are asked, and I don't think any member gets up without having the good intent of raising a solid issue.

**The Chair:** Okay. I'd like to thank you, Mr Farnan. I'd like to thank you, Mr Sola, for appearing before the committee here today.

**Mr Sola:** Thank you.

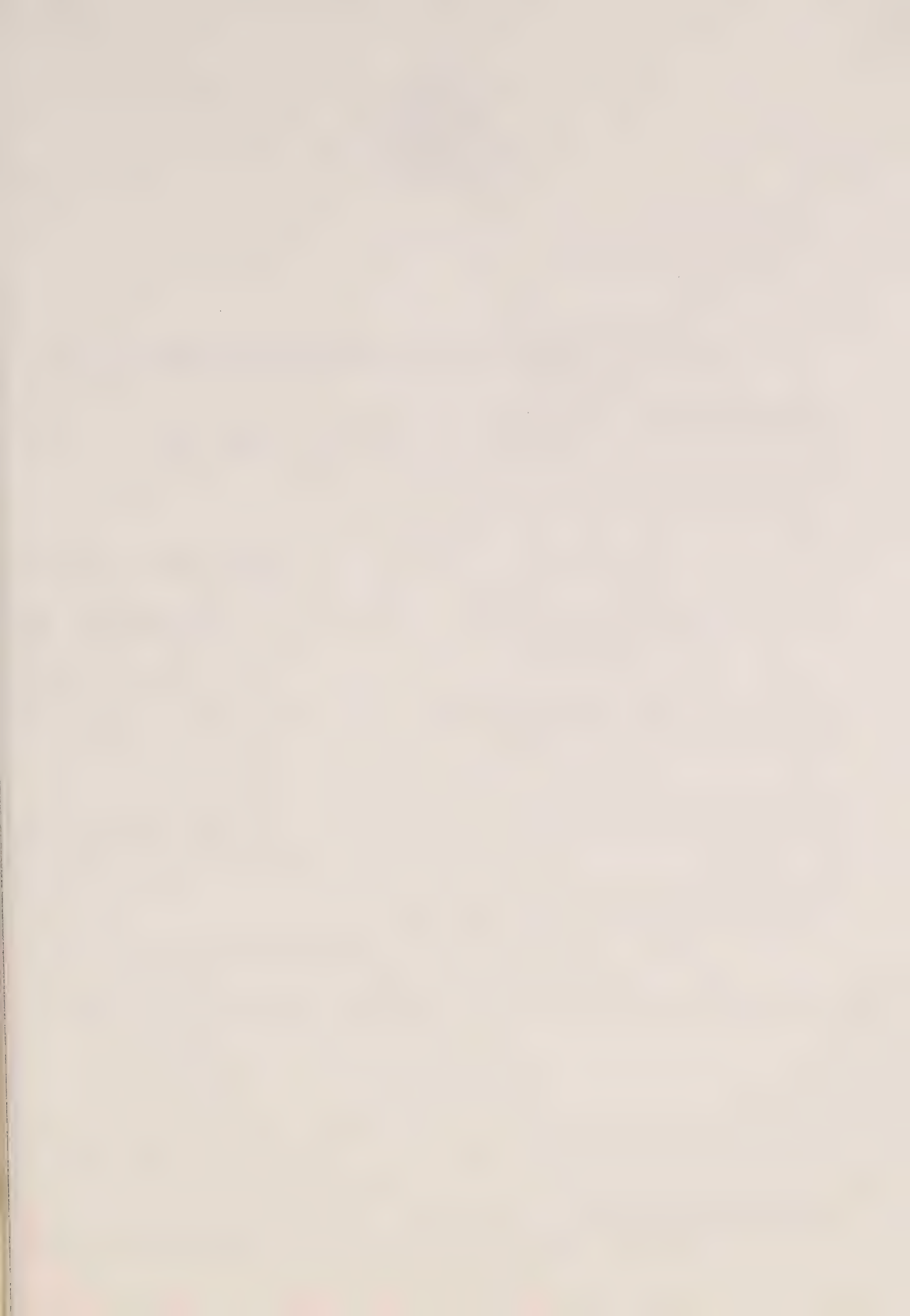
**The Chair:** Our next meeting will be Wednesday, June 16, and we hope to start here at 3:30 or after orders of the day. This committee is adjourned.

The committee adjourned at 1715.











## CONTENTS

Wednesday 9 June 1993

<b>Subcommittee report</b> .....	M-3
<b>Role of the independent member</b> .....	M-3
Will Ferguson, MPP	
John Sola, MPP	

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

- \***Chair / Président:** Hansen, Ron (Lincoln ND)
- \***Vice-Chair / Vice-Président:** Farnan, Mike (Cambridge ND)
- \*Johnson, Paul R. (Prince Edward-Lennox-South Hastings/PrinceEdward-Lennox-Hastings-Sud ND)
- \*MacKinnon, Ellen (Lambton ND)
- Mathysen, Irene (Middlesex ND)
- McClelland, Carman (Brampton North/-Nord L)
- \*Morin, Gilles E. (Carleton East/-Est L)
- Owens, Stephen (Scarborough Centre ND)
- Sterling, Norman W. (Carleton PC)
- \*Sullivan, Barbara (Halton Centre L)
- Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)
- \*Wessenger, Paul (Simcoe Centre ND)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Sutherland, Kimble (Oxford ND) for Mr Owens  
Turnbull, David (York Mills PC) for Mr Villeneuve

### **Clerks / Greffières:**

Freedman, Lisa  
Mellor, Lynn

### **Staff / Personnel:**

Sibenik, Peter, procedural research clerk, committees branch  
Yeager, Lewis, research officer, Legislative Research Service



M-3

M-3

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 16 June 1993

# Journal des débats (Hansard)

Mercredi 16 juin 1993

## Standing committee on the Legislative Assembly

Role of the independent member

Administration and members' services

## Comité permanent de l'Assemblée législative

Le rôle du député indépendant

Gestion de la chambre  
et services aux députées et députés

Chair: Ron Hansen  
Clerk: Lynn Mellor

Président : Ron Hansen  
Greffière : Lynn Mellor





### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Ministry of Government Services, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, ministère des Services gouvernementaux, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 16 June 1993

The committee met at 1622 in room 151.

## ROLE OF THE INDEPENDENT MEMBER

**The Chair (Mr Ron Hansen):** We'll open the meeting. We'll start off with Mr Dennis Drainville, MPP, on the role of the independent member. We have one half-hour starting now, Mr Drainville. Welcome.

**Mrs Barbara Sullivan (Halton Centre):** Mr Chair, on a point of order: Before we proceed with Mr Drainville, the agenda, as it was determined at our last meeting, would have had Mr Sibenik proceed before Mr Drainville. I understand that Mr Drainville's schedule has been placed in an awkward situation as a result of the House being delayed today. However, on our books from the last meeting was a motion suggesting that after Mr Drainville appeared before the committee, we should go into private session to discuss some of the issues.

My suggestion would be that that motion be changed so that after Mr Drainville has completed, we will still hear Mr Sibenik in a public forum and then move to a private session.

**The Chair:** Everybody in agreement? Agrees.

**Mr Dennis Drainville (Victoria-Haliburton):** I appreciate the opportunity to come before the Legislative Assembly committee and discuss independent members.

As the members will know, I was involved in looking at the whole role of independent members back on Thursday, June 11, 1992, when I presented a resolution to the House, which was voted upon and which was adopted by the House, dealing with some of the elements, some of the issues, that you are dealing with presently. It should be noted and underlined to this committee that the House has already given a clear indication of its support for the rights of the independent members. That resolution which was moved and passed in the House is on the first document, at the very end of the Parliamentary Reform in Ontario discussion paper, which I have provided for the committee members.

I'd like to talk a little bit about this process because in a sense, the reason the committee is now dealing with this is because it was an issue that was raised not only because there are now three independent members, but also I sent a letter to the House leaders just after my move from the government side to sit as an independent member on the opposition side. I have also given you copies of that particular letter to look at; it indicates some of the questions I have about independent members and their role in the House and the need to redress the lack of rights in that respect.

The third document I have provided you with is the issue of privilege, which I raised in the House, regarding independent members. That should give you a clear indication of what I've said on the issue and the direction I would hope the Legislature will move.

Let me just say in my prefatory remarks, in a very general way, that it seems to me the issue we're dealing with here is the issue of full representation for the people of Ontario; that is, if a person ends up in a situation where they are an independent member because they've left a party, or because they have been forced to leave a party, or if they have been elected as an independent member, they still have their role to exercise in representing the constituents of their riding. They need to have the tools, they need to have an equal voice in the Legislature, because those people cannot have their rights diminished by not having an equal voice.

How that is done is obviously the task that is set before this committee, to figure out a way to ensure that the rights of—again I put the emphasis here: It's not just the rights of independent members we're talking about; it's the rights of the people of Ontario who are represented by independent members, that we have to maintain. To that end, I would like to draw your attention to various elements of the role of the member within the House.

The issue of statements and the issue of raising questions is not a particularly difficult thing to organize. It is organized differently in various jurisdictions. The House of Commons has been dealing with this for a long time. The National Assembly in Quebec allows independent members to ask questions and to participate. We have many different models to choose from; we don't need to worry that we are breaking new ground, necessarily, in this particular area.

We know that the House leaders got together in a meeting that was held a number of weeks ago. At that meeting, there was an unofficial understanding that independent members would be allowed to ask questions and would be allowed to make statements, but based, naturally, upon the numbers that are in the House. So it wouldn't be something that happened frequently but rather something that happened according to the discretion of the Speaker, which is similar to what is done in the House of Commons presently in Ottawa. I would also like to say that in Westminster this practice also prevails: Independent members have rights in that House for both statements and questions.

I'd like to not spend a lot of time on that, because I



think it is self-evident. Obviously, members need those opportunities, and however the committee and the Legislature resolve the issue, generally speaking, I'm going to be quite amenable, because I'm not here to try to get X number of times in the House; I'm here to ensure that a right is recognized. That's the important point.

I would rather turn to two more difficult areas in which the role of independent members needs to be established, and they're more difficult because we don't have as many obvious examples within other jurisdictions, either in Canada or elsewhere. It's the issue surrounding membership on committees and the issue surrounding private members' bills.

Let's deal with the committee situation first. I will preface this particular section by saying our committee system is fraught with many significant problems. It does not work effectively. It needs a total overhaul. If you look at the reform package I put before you, I indicate a number of changes that need to be made in how committees function.

1630

One of those problems, which affects some of the things I'm going to say to you, is the issue of numbers on the committee. We have huge legislative committees. We have six government members, we have five opposition members. There are great difficulties. The smaller the caucus is, the more difficult it is to ensure that your numbers are there, but there are great problems for the government caucus as well in ensuring that there are six members. It would be better to have smaller committees.

The reason I raise the number is that the issue comes, if you have an independent member serving on a legislative committee, how do you effect such a change?

I have in fact put down in my resolution last June, and it was voted on in the House and duly accepted by the House at that time, a particular formula. I am not saying that this is the only formula, or even the best formula, quite frankly. I'm quite open to look at many different options as to how we can do it. The one I suggested in my proposal said basically that if you have independent members, what you would do is set up a situation in which the independent member, in some form of consultation with the House or with the Clerk, would choose each session a committee he or she is to serve on and that, in a majority Parliament, one extra government member would be appointed to that committee so that the government maintained its majority in that committee.

Some people have asked, how is that fair when in some caucuses members have no right to determine what committee they're going to be part of? I'm willing to open up a discussion on that and say, "Well, that's fine." I think in fact the people should have more choice in the parliamentary system, but unfortunately it is the

case that I don't think people are respected in how they are moved around and chosen for various positions and their various involvements.

I would say it's very easy to do. You can put a hat out there and you can put the names of the committees into the hat and the independent member can grab one of the names of the committees and that person can end up there. Therefore that person is not choosing a committee, if that is a particular problem to some people. I would say in that situation, it at least is fair.

The proposal I'm putting before you basically says that there are ways and means of putting an independent member on a committee. I don't think there's any doubt of that. Once a member is on the committee, they are there for the whole session. They cannot move to another committee, although, like every other member in the House, they have the privilege of sitting in on any other committee and hearing what's going on, receiving the documents of that committee, but they do not have a vote. I guess the model I'm giving to you is just one suggestion as to how we can effect the change of putting an independent member on a committee.

As to the principle, I'm quite willing to argue the principle. It seems to me that the legislative life of any member of the present system that we have in Ontario or in Canada means that committee involvement and the ability to have a full effect on whatever business comes before that committee must be primary. If I'm sitting on a committee, yes, it is certainly a great privilege and opportunity to hear what's going on and even to ask questions, but not to be able to vote on any committee means a diminishment of the role of that member. Again, what I'm here to do and here to say to this committee is that we must recognize that for them to be participating appropriately in the parliamentary process and to ensure that the people of whatever riding have their rights respected, that person must have that role defined as including full committee work and committee participation. So I would put that principle to you and I would put that particular example to you for your own investigations.

If I might move on then to the next area of concern, that is, the opportunity to put forth a private member's bill and the opportunity to participate in the debate on private members' bills, I have to say that as a structure, the present structure of private members' hour, if there was no such thing as independent members and if there was never going to be such a thing as independent members, I think works rather well. But this is a bit of a spanner thrown into the works when you have a situation where you have independent members, because you can't neatly give 15 minutes to each caucus to be able to do this. I think it would also be a problem, by the way, if we had five parties. We may never have that, but if there were, what would happen? I think we would have to change the system that we have.



I believe especially, of all places and of all times, private members' hour should be for every member of the House. By its very nature, it is the opportunity for every member of that House, regardless of political affiliation, to fulfil one of the highest callings of this political life, and that is to be a legislator, to be able to bring to the House an issue of concern and to be able to formulate laws that will help to govern the people and the society of Ontario. That's what we're called to, to be legislators.

To not provide opportunity for members because members don't happen to have a particular political affiliation is indeed to take away from those persons the opportunity to fulfil fully the function for which they were appointed or elected. So I would say to you that this is a very serious lack in the present system.

It seems to me that the way of balloting needs to be changed to reflect the role of independent members so that they do have an opportunity to be in the lottery when they are chosen, and it seems to me that the actual division of time needs to be allotted not according to party—this is in terms of the debate now—but according to members. Let me explain why I think that's appropriate, because what we're talking about is not party discipline. What we're talking about are the members of the House who are gathering together, who have diverse views on things, and giving them opportunities to respond to the proposal, the resolution, the bill that is being set forward by a particular member of the House.

If you did away with the giving of time to caucuses, what you would end up doing is, for instance, if you were to divide the time—and I'm just taking a "for instance" here—10 minutes to the person who is proposing the resolution or the bill and then five minutes to every speaker after that, because I've gone back and looked at my own notes from private members' hour, and I've seen that the vast majority of members who speak in that time period generally take about five minutes. That is appropriate in that particular venue.

I would recommend that you shift the allocation of time, therefore, from party caucus to individual member. You would get the same number of people, with the possibility of one independent member being recognized dealing with that particular issue at that particular hour. It wouldn't be appropriate, necessarily, to recognize every independent member every hour, but it would be appropriate if there were independent members there who wanted to allow one to be part of that debate for that hour. I think there are ways and means, again, of dealing with that particular issue.

I'm going to conclude by saying that this issue is a significant issue not only because we have three members who are now independent members but because we claim to have a system which is firmly based upon

democratic freedom. If indeed it is, we have to be custodians of that freedom and of that democracy and ensure that all people in the province of Ontario receive the representation they deserve to have.

1640

**Mr Mike Farnan (Cambridge):** Dennis: as usual, a thoughtful presentation. The question I put to you is the same question that I put to our colleague who presented before the committee on the last occasion. I believe you were present when I put the question to him.

**Mr Drainville:** No, but I read your Hansard.

**Mr Farnan:** Obviously, if you've read it, you've given it some reflection, because it's an issue you're thinking about. How do you justify to a government or an opposition backbencher that time would be allocated, even on a basis of per member, across the board, when within their caucus they have to justify getting on, more particularly with opposition members? If you have a small caucus, let's say—it's not that small, but let's say the Conservative caucus. I don't know how many people are in it; let's say it's 20 members. The critics there would have to fight to get on the agenda and would not necessarily get on, whereas you would be guaranteeing the independent member access. There's some tension there. I'm wondering how that backbencher would react to guaranteed time for an independent member where there are no guarantees for the members within a party.

**Mr Drainville:** There are lots of guarantees. The question here is how time is allotted and how questions are allotted. If you look at the caucuses and if you include—and you have to do this—the amount of time that's given to the leaders, there are many, many questions and supplementaries that the leaders have. The leaders have it within their power to give those questions out to various members within their caucus, and they do that sometimes, particularly if the leader can't be there. But very often, the leader tends to take, let's say, two questions and their extra supplementaries. They often take 20 to 30 minutes in doing so.

The point I'm trying to make is that every caucus has to make its decision on how it's going to use its questions. If they're not going to apportion those on a regular basis to everyone in their caucus, that's a decision they make, and they make that decision every day. What we're talking about here, and all we're talking about here, is not a member who is going to be taking up an inordinate amount of time, because, according to the statistics of 130 members, a member will get up perhaps somewhere between three to four weeks. What that means, in terms of a sitting, is maybe twice during that sitting.

As somebody who was involved in the whip's office on the government side at one time, what I noticed very often is that a lot of the same people get up on ques-



tions on the government side and a lot of the same people get a lot of statements. That is a decision that's made within that caucus, for whatever reason. They have every right to make that decision, but whether it's fair to the other members who don't often get up or, for whatever reason, don't use the opportunity to get those questions or statements, who knows?

The point I'm trying to make here is that the caucuses deal with the time allotted to them according to their wish. All I'm saying in this case is that we're not talking about an inordinate amount of time; we're talking about maybe twice during a sitting. In that, all we're doing is recognizing the right of that person to use that time appropriately, not for themselves, but for the people of their riding.

**Mr Farnan:** Let me put a philosophical question to you. I know you enjoy philosophical questions.

**Mr Drainville:** I do.

**Mr Farnan:** We have traditionally a system based upon party organizations within the province, within the country. The role of the private member is to a great extent an anomaly within that structure. Within a political party, there are advantages and there are some inconveniences. You will recognize the fact that within a political party, because you are a collective, very often you have an opportunity to express your view, your opinion, but that indeed the collective wisdom will prevail and that there is some obligation—and more of an obligation on some matters than others—to support the collective wisdom of your caucus, whether it be the government or an opposition party. There is, in a sense, a reward based upon this kind of dichotomy that exists within a political party. Maybe someone could argue that an independent member wants to enjoy all of the privileges without having any of the constraints. I would put it to you that there would be a school of thought that would say, "Okay, there are matters of discipline. In some areas the obligations are greater around some issues than around others," but there is, within that party, the opportunity to have dissent, realizing that you are part of a team.

How would you respond to the individual, not just in the House, but in the general public, and say, "This guy really wants his cake"—I don't know what the expression is. He wants to keep it and eat it. He wants all of the good points without all of the inconveniences. How would you respond to this kind of argument?

**Mr Drainville:** I have no difficulty in responding to it, because it's the kind of argument, I believe, that really has no basis in reality. What I would say to you is what you're doing is putting a focus in terms of the parliamentary system only on the party, that the party is the only vehicle by which a member should have the full rights of engagement within the parliamentary process.

All I can say to you is that that kind of focus to me doesn't make any sense at all, because there have been independents throughout parliamentary history, and there were more in the days when there were two parties as opposed to three parties, but let me give you a contrary case which would prove my point. Let's say, for instance, that there was a party in Ontario that elected 11 members—a party, mind you, that elected 11. They would not be recognized in that House. There would be 11 people with one discipline, with the same fervour and the same views, willing to put them forward on behalf of the people of Ontario, as any of the three mainline parties. But they would not be recognized as such within the parliamentary structure that we have and they would not get the moneys that would go with a party and they would not get the benefits that would go with a party.

That's fine, because we have deemed it, in this Legislature, in this province, as saying no, you have to have 12 to be a legitimate party. They would be considered independent members, all 11 of them, and they would not have the moneys that go with the caucuses and they would not have the extra things the caucuses have. There are lots of things that I don't have, extras, that you have as a member, and that's fine, because I made my decision to sit as an independent and I knew clearly what I was doing and why I was doing it, but those are things that happen to revolve around the life of the party and the caucus. I'm talking about the rights of the member to give voice to the concerns, the needs and the aspirations of the people of my constituency. Woe betide the member or the party who will stand between me and those realities.

**Mr Farnan:** Let me respond, because basically you've made an assumption in terms of the 12 members, but in jurisdictions where a party has elected numbers of members that didn't reach the designated goal for recognition, accommodations have been made to those groups. Accommodations have been made indeed. The Bloc québécois in the federal House is an example.

**Mr Drainville:** I know quite a bit about the Bloc québécois, so what are the accommodations?

**Mr Farnan:** Allow me to finish, Dennis, because you went on quite a ramble there. I want to suggest to you that the voting public may take a view that much of what you say makes sense, but they would say, "That makes sense for somebody who presented himself as an independent, not for somebody who in fact decides to opt out of a political party after they have already been elected as a member of that party."

I would say they would probably extend the logic of that argument and say: "You know, our good friend Dennis ran as a New Democrat. He knew what the rules were when he ran, and now that he's of an independent nature"—I know you have a track record of speaking to

this issue but I think there would be an argument among a considerable number of the public who would say, "Next time, if an individual runs as an independent"—we don't have that example in our House at this stage and there may be some degree of consideration on the part of the public for that kind of recognition of rights for an individual who actually ran as an independent, but I suspect there would be a strong sense among the public that says: "Hey, guys, let's get real here. If you guys run as members of a political party, you know what the rules are and you want to change the rules in mid-stream."

I'm not saying there isn't need for reform; what I'm saying is that within the public there is a sense that perhaps this could be viewed as self-serving.

**Mr Drainville:** Let me say that I don't believe it's a matter of the public at all. I believe what you want to discuss right now is whether I should have left the government caucus, and whether by leaving the government caucus, I should not have the rights that every other member of the House has. Quite frankly, I'd love to debate that with you at great length, but because we only have two minutes, I'll leave that for the people who are watching this and others to decide the veracity of it.

But I will say this: The issue that's at stake here is representation of those members who have been elected and those members who are presently in the House, and how this committee and how this Legislature is going to ensure all members have the equality of rights they deserve.

**The Chair:** Thank you, Mr Drainville.

**Mr Drainville:** Thank you, Mr Chair.

**The Chair:** Have a safe trip to Niagara Falls.

1650

#### ADMINISTRATION AND MEMBERS' SERVICES

**The Chair:** Number 2 on our item is changes in the administration of the House and provision of service to members. We will have the Clerk of the House, Mr Claude DesRosiers. Welcome.

**Mr Claude L. DesRosiers (Clerk of the House):** Thank you, Mr Chair. It's always a pleasure to appear before this committee and to answer your questions and to give you a chance to discuss a few of the items that you might have noticed happening around the assembly since the last time I appeared before you, in December 1992, I believe.

To itemize a few of the items that have been preoccupying the administration since December, I'll just outline a few of them and then the clerk has passed around to you our "Status of Items for Discussion" list, which is our agenda at the management advisory committee.

This is the piece of paper that guides our business at the management advisory committee every week, and as

you can see, it's what I call a running agenda. Those items stay on there and are discussed every week. That is to say that status reports are given on those items and when we dispose of an item, then we minute it and copies of those minutes, along with any amended "Status of Items for Discussion" list, go to the Board of Internal Economy. I'd gladly go down the list of those items for you and if you have any questions, please don't hesitate.

Some of the items that were on that list during the time I'm talking about are no longer there, because they appeared on our agenda briefly and disappeared because they were dealt with. They are the ongoing reports that we get from the joint health and safety committee. I notice that the co-chair of that committee is your research officer. Mr Yeager serves well in that capacity, and it is MAC's duty to review those reports, to oversee them and to make sure that the recommendations are gone forward with. In that sense, there has been an inspection of the legislative library, north wing, and the Whitney Block locations, and any changes that were recommended there are either in the process of being addressed or have been addressed.

There is another item that appeared on our agenda and has disappeared and you may not have heard about this. It's what we call an electronic distribution system of House documents. Most of you probably don't realize that on the feed that goes out to the various cable companies of the live distribution of the House proceedings and the committee proceedings is an electronic device that you really don't see on the screen. It uses the same cables that distribute the image, and on that cable runs, for example, the Hansard.

Someone who gets a black box in his or her office and wants to get Hansard can use that black box to decipher the coding right below the image there. It's much too electronically developed for me to explain, but Bill Somerville, I'm sure, could answer all your questions on that. That is going out and that came through MAC.

Also, an administrative policies manual has been completed and distributed, a new one. It replaces the old Manual of Administration which had been around for quite a while and which was basically a compendium of the administrative practices of the government of Ontario. Since we are not the government of Ontario—the people who work for you here are employees of the assembly and report to the Speaker—therefore, we felt it would be better to get our own manual. That was written by staff, it was written by a committee, and it was finally passed and approved recently.

We have been reviewing our employment equity procedures. We have also been discussing a discrimination and harassment policy.

We have been discussing various recommendations that have come to us from a committee of staff, which



has been formed by management advisory committee at the suggestion of the Speaker, which is called greening Queen's Park. It is devoted to the environment in these buildings and these grounds, to try to make sure that we are addressing any problems in that sense.

Also, a very interesting project going on that you might not know about is that there is a group of staff in my office presently writing a book on procedure. As you probably know, most jurisdictions have a book of doctrine. In Ottawa, they have a book that's called Beauchesne, from the former Clerk of the House in Ottawa, and in Westminster they have Erskine May's Parliamentary Practice, and that again is a former Clerk.

In this House there is no such book. We felt it would be important for members to have something they could actually get which was their own and which explained the parliamentary procedures and practices that have evolved in Ontario and are continuing to evolve. Parliamentary procedure is something that is not static; it's continually evolving, as you know.

We're trying to get a fix on that. We have a group of people busily writing. They are very busy. I hope I won't scare any of those people by saying this, but we hope that maybe in six months' time we'll have something we can produce. It might be a bit longer, but we'll take the time that's needed to produce something good and solid.

The list of items you see, just to get you acquainted with a bit of our practices at management advisory committee, this is the list, for example, that was revised on June 2, and there haven't been any changes made to it since then.

There are 13 items on there, starting with "Renovation/Restoration." I call that item at every meeting and Ms Speakman, who is responsible for restoration and renovation here, gives a report. You will see there's a column there, "Delegated to." It shows who's responsible for the item. On the right there's "Reported Status/Comments," so that members know exactly where we are on this.

"Native Cultural Display" is an item that's been on there for quite a while, but it's moved up to number 2 and that means it's getting close to fruition. The comments there say: "Opening of exhibit planned for October 1993. Curator for Woodlands Cultural Centre assisting with display."

Then you go on to number 3, which is "Review on Grounds Procedure." This is another very important aspect of the way we proceed, which is that we make sure that close communication with the caucuses is had at all times, so that we feel assured that when we do approve a policy, even if that policy only affects the staff, at least the caucuses have been consulted. In this case, review of the grounds policy, of course, affects everybody here, and that will go to the Board of Inter-

nal Economy eventually, once MAC is satisfied that it's been well reviewed.

#### 1700

"Political Activity for Legislative Assembly Staff" belongs to Mr Ponick, and we have a policy coming down. We have one already, but it's being reviewed to see if the one that we have is adequate.

"Task Force on the Environment": I talked about that a bit earlier.

"Employment Equity": I talked about that as well. There is a consultant meeting with focus groups, actually, in dealing with staff of the assembly.

Number 7 is "Gift to the Northwest Territories Legislative Assembly." The NWT is in the process of building new Parliament buildings which will be opening on November 17 of this year. They have asked that various provincial legislatures, and the federal House as well, if they wanted to, contribute a memento to this occasion, and Ontario will be presenting a modest contribution to this.

"Classification Review": There's an ongoing group of people working on a classification review. The preoccupation there was that the classifications that apply to employees working at the assembly are those classifications that are found in the public service of Ontario, and it was felt by myself and my colleagues that it too often is far from being adequate and leads to quite a few problems. It's important that we have our own classification system that we can identify with and that will illustrate even more our separate status from government.

"Human Resources Manual": It's going on. There's a group of employees writing that, as well as reviewing the one we have already.

There's an operational review being done on the Speaker's office.

There's a discrimination and harassment policy that's been presented to management advisory committee, and that policy is under review. It's been presented to MAC, and MAC has asked that it be sent out to the senior managers for their comments.

"Access to Information": This is a project that has been presented by Mr Land, the director of the library. He has had requests for certain documentation that is produced by the library, and the question is being asked whether that should be made available to the public for fees.

"Security MOU," or memorandum of understanding: It's being negotiated. It's in the final stages, I think, and the Speaker and the Sergeant at Arms will surely have more to say about that when they appear before you in that sense. But it's at the final stages, and hopefully when it's accepted and when it comes out of the ministry, it will permit us as a Legislature to permit the Speaker, who has by law responsibility over security in

this institution, to get a better grip on security.

I'll surely be more than happy to answer any of the questions that you might have on this or on any other thing that might be a preoccupation to you.

**Mrs Sullivan:** Thank you very much. I appreciate the reports that come to this committee, and I think all members do.

I have some quite specific questions, because I think that these issues would have been on your minds in terms of planning the activities of the Office of the Legislative Assembly and those other areas that fall under the jurisdiction of the Speaker.

First of all, what will be the approach of the Office of the Legislative Assembly in terms of the aftermath of the social contract expenditure control decisions? What will be the approach in terms of negotiating? Are there unilateral budget cuts being looked at in terms of staffing? The other issue is how those controls will affect the restoration and renovation activities here.

I'd also like to ask, although it isn't the purview of this committee, that the committee receive a full report on the budgetary lines on restoration-renovation and any reallocation within that program or from other areas of the Office of the Assembly. I think that would be useful information as we look at the details of the operation around here.

I see the item on the agenda with respect to changes in the administration of the House and services, and I think we are in a very different scenario than we have been in the recent past where the demand was for expansion rather than contraction of services.

**Mr DesRosiers:** Thank you very much for the question. It's a very actual question, I guess. It's difficult for me to answer—but I will give you an answer, the best answer I can give you—because the final decisions on this do not belong to the administration. The final decisions on this belong to the Board of Internal Economy.

We are presently in the 1993-94 exercise of estimates. Estimates are prepared in this place by staff, starting some time in the fall. As a rule, in October estimates are put together for the coming fiscal year and usually around January they're pretty well finalized. It is usually hoped, by staff anyway, that the board will find time to study these estimates.

The estimates prepared for the exercise in 1993-94 were taken from a series of estimates. The base of those estimates was the 1992-93 exercise, which had produced a quite sizable cut. I don't have the exact numbers here, but an additional 5% cut—close to that, anyway—was proposed on those estimates. Now they are before the board. They have not been studied by the board.

I can only presume, and my presumption is that maybe the board thought it wiser to wait on the further study of those estimates, to await the social contract

decisions that were to come down. You probably would know better than I where that stands as a general view, but we are awaiting the view of the board. The board has a meeting scheduled for the 23rd, for next week, and hopefully then we'll see.

In the present estimates as they stand before the board, there are no increases in positions proposed. That is a directive that we imposed upon ourselves and are following, and there you are. We're waiting to see whether the board will decide on further cuts.

On the salary side, again there are no provisions by us, as the estimates were presented and it'll be for the board to decide what those will be.

There was another very important part of your question, and it has to do with restoration-renovation. That budget again is a decision of the board. The board, I take it, decided two years ago to embark upon a roof renovation, which is now in its phase 2. It's a bit deceiving to call it just basically roof renovation, because it's more than that. It's also the upkeep of the stonework around the building.

I hesitate to call it a very old building, because it isn't. It's 100 years old, and I don't think that's very old as far as historic buildings go. But this building has not been repaired, and therefore it sometimes happens that you fix one place and it leads to another problem. There has been some of that, and it's very difficult to foresee exactly what is going to be accomplished in a given year.

We're in phase 2 of the roof repair exercise, and that is on the books. Phase 3 has been approved as well, so we're fully expecting that once phase 2, the west wing, has been finished—the centre block is completely finished now—then the scaffolding will be transferred to the east wing and that will proceed. The board has not decided at all yet what to do after that. It will be its decision to see whether it proceeds with further needed restoration or renovation. That will be put forward to the board.

1710

There is a part of your question that is a very specific one, and I'll try to address that. It has to do with any transfers that might have taken place in order to address the renovation-restoration. To my knowledge, there has been one transfer to that effect with the approval of the board last year. The board approved a transfer of the use of committee funds. The exact amount I don't know; I have the figure \$2 million in my head but it might be \$1 million as well. We can check that easily for you. The board approved the transfer of that money, which was not going to be spent in 1992-93, to the roof renovation project.

Of course, one might ask, what was that sum of money doing in the committee budget? The answer is very simple again. Historically, and this I think you will



find in most parliaments in the world, there have been amounts of money put into certain budgets, such as committees', for the very simple reason that it's very difficult to budget these exercises and usually they're budgeted on major activity years.

In order to answer the requests of the House when the House decides to answer a special circumstance, to address special needs, to create a special committee—which might or might not be expensive, but if I think back, the last expensive special committee we had, on the Constitution, was quite an expensive exercise. Also, there's a time requirement there that the House usually makes these decisions, because there's a need for quite a lot of discussion beforehand and it usually arrives at these decisions at the last minute, which leaves very little time between the actual motion passed in the House to create the committee and the actual necessity for the committee to get under way. Therefore, if there isn't that amount of money in the budget, it becomes very problematic, because the only other way to get that money would be on supplementary estimates, which might take quite a lot of time.

**Mrs Sullivan:** If there are no other questions, I'll go back to this, because the Clerk just opened up the issue. That is the process of reallocating funds that have been approved for committee work within the Office of the Assembly without going back for supplementary estimates. While that's a tradition, it just seems there's something wrong with that process, that indeed the approval of specific supplementary estimates, which might in the end have the same effect of reducing allocations to a committee but increasing them for another project or another committee, is more appropriate than simply moving or basically doing a cash transfer from one account to another account.

I find that process one that is distasteful to me, because I think it's hard enough to sell publicly a project such as the renovation of the Legislature without also having what could be a side issue of sliding public funds into the renovation in a way that isn't perhaps seen to be up front.

**Mr DesRosiers:** We have no problems with that, contrary to other administrations, maybe. You see, we have no special programs to run; we're here at your service. As we say, this is the way it has been done historically and that's the reason it's been done historically, but we have absolutely no problems with saying to the board, for example, if the board so asks, "We'll give you a best guess of what committees are going to be and we'll factor it as a normal equivalent, and let's say we'll put \$1 million instead of \$3 million in the budget for committees." We have no problems with that, because the money doesn't get spent anyway.

The only time in history—and I've researched this—that I can find that money was transferred out of a committee budget for another purpose was last year at

the special approval of the board. That's the only time. The only reason the money is there is to answer the possible requests of the House.

This is another thing in parliamentary administration which is quite different from public service administration in the sense that—some say it's rumour and other say it's fact—there is a perception, I'll just put it at that, that government public servants, at the end of the fiscal year, when there's money left in their budgets, go out on spending sprees. I've heard that said; I don't know.

**Mrs Sullivan:** He's very cautious.

**Mr DesRosiers:** But I can surely assure you that that does not happen here. We have no programs, and if the board decides to say, "No, we really need only \$1 million in the committee budget next year," it won't change anything for us. It doesn't chop positions, it doesn't chop programs. The only thing it can affect is that if the House decided, because of an urgent necessity of an urgent nature, that it wanted to create a committee this week for next week, it couldn't because there wouldn't be any funds there.

**Mrs Sullivan:** The Chairman's giving me a lot of leeway here.

**The Chair:** The thing is there are no other members asking questions.

**Mrs Sullivan:** Then in terms of the process, was the reallocation of funds out of the committee budget required because there were cost overruns on the estimates for the renovation?

**Mr DesRosiers:** No, there weren't. The reason it was required is because we knew and we know the cost of the total project. What we don't know and what we can't gauge, because it's not a fine science—and Mrs Speakman does a wonderful job on this; she's really on top of it; she really works very, very hard and very efficiently at this. It can't be better organized, in the sense that your best-laid plans always go awry and you can't say, "It starts on this date and it goes."

Also, there are overlaps. We know what the total cost of the project for the three phases will be, and we are well within that. The only thing that happened in that sense is that we needed money to go a bit further because we can't stop everything and say: "Okay, we'll have to wait another three weeks, guys. Cross your arms and we'll wait until we get the next." It has to flow. Otherwise, I think the people of Ontario are losing money, because if you stop work, we have contracts to respect and so on.

That was the only reason. It was just to keep the money flowing during the project. That was well explained to the board, and that's why the board said yes. Otherwise, the board, I'm sure, would have said no.

**Mrs Sullivan:** I think, Mr Chairman, it's useful to have that information for the public record as well as that which is presented to the board.

Just as I finish here, I think Brian Land, who is now the executive director of the library, will be soon leaving the assembly. He's provided exemplary service here, has been a leader in his own profession and I think there is a tribute to him that the Speaker or the Clerk might want to discuss with the committee.

**The Chair:** We have one question from Mr Johnson, who can wind up.

**Mr DesRosiers:** I'll come back to that. It's a very good point.

**Mr Paul R. Johnson (Prince Edward-Lennox-South Hastings):** My question isn't nearly as profound, but it's a question nevertheless. I was wondering when the compendium that will probably no doubt be referred to as the DesRosiers will be completed and when we'll have access to that. We have a comparable compendium in Ottawa called Beauchesne.

**Mr DesRosiers:** First of all, let me correct you in the sense that I don't believe it will be called the DesRosiers. We haven't decided on a title, but I think we can find something a bit better than that.

It's under active work right now; the people are working very hard. I'm using the figure six months, but that might be optimistic. But you'll see it and the member for PELSH can rest assured that he'll enjoy this piece of work.

**Mr Paul R. Johnson:** Of course you know that you may have no control over what it eventually becomes called.

**Mr DesRosiers:** Well, there you are.

1720

**Mrs Ellen MacKinnon (Lambton):** I don't have a question. I just wanted to make a comment, really, where I see "review on grounds procedure." I don't know what the procedures are, but they're certainly working because I think the grounds are just absolutely exquisite this spring, they really are. I noticed the pink.

**Mr DesRosiers:** Again, that's Mrs Speakman. Mrs Speakman's responsibilities, I guess, can be described best as she administers the contracts. Because, as you know, since 1988, I believe the date is, the Speaker now has full control over the grounds. It wasn't that way before; it was a governmental responsibility. Now we do have someone who administers those contracts and we do have a word to say in that, so, yes, Mrs Speakman does do a very good job. Thank you for that.

To get back to Brian Land, if I can, on Monday from 4 to 6 there is an activity planned to thank Brian for the wonderful service he has provided to this institution. I don't know if you know this, but Brian has been involved in parliaments not only at Queen's Park, but he was at the House of Commons before and very much a dedicated servant of parliaments. You have all been invited to this, whether you realize this or not. There is an invitation in your office someplace and I'm hoping

to see as many members as we can from 4 to 6 on Monday.

**The Chair:** Yes, we all received that invitation.

Mr Speaker, I didn't acknowledge you earlier. I know you were in and out. I guess you were back and forth to the House there every time the bells rang.

**Hon David Warner (Speaker):** First of all, Barbara, I appreciate your comment about Brian. He's been here 15 years, provided some terrific leadership for the development of our library and I dare say that our library and its services are second to none in this country. In large measure, that's due to the leadership that Brian has provided. So if as many members as possible are able to come to this little farewell gathering, I know Brian would appreciate it, because the number one task which is shared by others who work here is to serve the members. So if the members come and say "thank you" and wish him well upon his retirement, I know he would be quite moved by that.

I just wanted to touch briefly on two things. One was what the Clerk was mentioning regarding electronic Hansard. We estimate that we are going to save money and trees, both of which are, I think, laudable goals, through the electronic Hansard. It means that if you have the converter and a computer, then you get the Hansard the next day. The law offices and universities and whoever else is really keen and eager about Hansard don't have to wait the three days for the mail delivery. So there's a real advantage to them to pick it up electronically.

Secondly, because many of those people now subscribe, although we have a fee, it does not cover the cost of printing. So if we can cut down on our subscriptions, then we will save money, and of course, as we cut down on the subscriptions, then there's less paper, we will save trees. We're the first Legislature in the world, I believe, to make use of this technology. I think the driving force behind this would be Bill Somerville, director of broadcast and recording, and I think it's a real tribute to him because it's utilizing modern technology in a way that is good for the environment and saves money.

The other thing I wanted to touch on briefly is, I realize that due to scheduling and so on you're not able to deal with security today and if it's at all possible, I would make a request of the committee that since next Wednesday may be the last Wednesday of this sitting, if it is possible to work this into your schedule, I would really appreciate it, because both the Sergeant at Arms and myself have some serious concerns with respect to security. We would like to show you a little tape and we would like to have a discussion and make some proposals. However, obviously we are in your hands and if you are able to organize your affairs so that you would be able to hear from the good Sergeant and myself next Wednesday, we would be absolutely



delighted to be at your beck and call.

**The Chair:** There are a few members of the committee who could maybe bring some ideas forward or some areas that we are lacking. I think we'd enjoy getting into that discussion. I guess Bill Somerville, at the Quebec conference that we had—a lot of this information you're bringing out here now—a lot of the members of the House don't realize what's going on in this particular area because I'm going to be looking at putting that in my office so I haven't got the amount of paper down there, because I'll be able to store it on disc. So when I want a Hansard of a certain date—pardon?

**Mrs Sullivan:** He won't let you take it in the House, though.

**Hon Mr Warner:** What a meanie.

**The Chair:** I think it's very important that the law office, or whatever office it is in Thunder Bay, receive it the next day at 9 o'clock.

**Hon Mr Warner:** A popular decision.

**The Chair:** And the cost of the mail, stuffing the envelopes and sending it out and the delay—I think it's quite affordable. I think the decoder is around \$600, but that decoder can be used for other uses for decoding other—by setting it up. The satellite also and cable—it's on both so everyone can receive it.

**Mrs Sullivan:** Can I ask one more question on that then? Will the members' budgets be increased to take into account the expenditure costs of the modem or device that allows electronic Hansard?

**The Chair:** I know we're not computer experts, but I understand you can be receiving it and using the computer at the same time to come into storage.

**Mrs Sullivan:** In order to send it out to a specific contact group, you're going to have to add another piece of equipment.

**The Chair:** No, you get it off your cable. It comes off the cable that's fed into your office or your satellite.

**Mrs Sullivan:** How do I get it out?

**Hon Mr Warner:** You need the decoder. The decoder is the thing you need and it's \$600 approximately. To answer your question, the Board of Internal Economy basically has three choices here. As with any other item they can determine that it's an item for all of the members and therefore it does not come out of their global budget. They did that with the computers, I believe, or they can say as they did with the security devices, it's an authorized expenditure but it must come out of your global budget. Or, thirdly, they can increase the budget. We started into the process of estimates, but we have not reached that item of business yet to deal with caucus services etc. What the inclination of the board will be towards members' budgets, I haven't a clue, nor do I wish to guess, but they do have three clear choices and there are instances in all three depending on the nature of the item.

**The Chair:** I would say that we get Mr Somerville to come in to explain it to us.

**Mrs Sullivan:** I don't care how to use it; I just want to know who's going to pay for it.

**The Chair:** But it's actually a cost saving.

**Hon Mr Warner:** If the board says it's an authorized expenditure then perhaps members would have enough room within their existing budget to purchase. As with all of these items, I always encourage members to write to the board, when they have a request or something that they are interested in, to contact their House leader, because it's the House leader that's on the board, and to notify the House leader that you have a request that you want going to the board for consideration and you'd appreciate his support.

**The Chair:** Are there any other questions for the Speaker or the Clerk? We'll have to see about getting Peter on the agenda and see about yourself, Mr Speaker, and the Sergeant at Arms on the following Wednesday.

The committee adjourned at 1730.











## CONTENTS

Wednesday 16 June 1993

<b>Role of the independent member</b> .....	M-13
Dennis Drainville, MPP	
<b>Administration and members' services</b> .....	M-17
Claude L. DesRosiers, Clerk of the House	
Hon David Warner, Speaker	

### STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

- \***Chair / Président:** Hansen, Ron (Lincoln ND)
- \***Vice-Chair / Vice-Président:** Farnan, Mike (Cambridge ND)
- \*Johnson, Paul R. (Prince Edward-Lennox-South Hastings/PrinceEdward-Lennox-Hastings-Sud ND)
- \*MacKinnon, Ellen (Lambton ND)
- \*Mathyssen, Irene (Middlesex ND)
- McClelland, Carman (Brampton North/-Nord L)
- \*Morin, Gilles E. (Carleton East/-Est L)
- Owens, Stephen (Scarborough Centre ND)
- Sterling, Norman W. (Carleton PC)
- \*Sullivan, Barbara (Halton Centre L)
- Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)
- Wessenger, Paul (Simcoe Centre ND)

*\*In attendance / présents*

**Substitutions present/ Membres remplaçants présents:**

Mills, Gordon (Durham East/-Est ND) for Mr Wessenger

**Clerk / Greffière:** Mellor, Lynn

**Staff / Personnel:**

Sibenik, Peter, procedural research clerk, committees branch, Office of the Clerk  
Yeager, Lewis, research officer, Legislative Research Service

M-4



M-4

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 23 June 1993

# Journal des débats (Hansard)

Mercredi 23 juin 1993

## Standing committee on the Legislative Assembly

Role of the independent member

## Comité permanent de l'Assemblée législative

Le rôle du député indépendant

Chair: Ron Hansen  
Clerk: Lynn Mellor

Président : Ron Hansen  
Greffière : Lynn Mellor





### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Ministry of Government Services, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, ministère des Services gouvernementaux, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.

# LEGISLATIVE ASSEMBLY OF ONTARIO

M-23

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 23 June 1993

The committee met at 1750 in room 151.

### ROLE OF THE INDEPENDENT MEMBER

**The Acting Chair (Mr Gordon Mills):** I believe we have some information on the role of the independent member. Peter Sibenik wants to make a few comments; one minute while we distribute the memorandum.

**The Chair (Mr Ron Hansen):** Everybody has the information in front of you. I'd like to introduce you to Peter Sibenik, procedural clerk on research. We've had him for three weeks, waiting to get him on the agenda. Welcome to the committee.

**Mr Peter Sibenik:** Thank you very much, Mr Chair. I'm happy to be here. When this particular issue first came before this committee, your committee clerk asked me to prepare a background paper. This is the paper you currently have before you. It's two documents. The first one basically deals with our standing orders as they are currently drafted and the provisions with respect to independent members, more specifically what restrictions are placed on independent members. I've divided the restrictions into those that deal with the role of independent members in the House and also with respect to committees.

If you take a look at that first memorandum, you'll see that there are certain things in the House that members cannot do with respect to members' statements and oral question period. I think those are the two most important restrictions on what independent members can do. I say that subject to the *modus vivendi* that was reached last month with respect to the Speaker, the whips and the House leaders getting together and coming to some kind of understanding as to what may occur in the future. Those provisions in section B of the memo have to be read in the light of that.

There are also a number of other restrictions that independent members who do not sit on a committee have to deal with, but they are in the same position, I would say, as any other non-member of the committee.

If we are interested in finding out exactly where Ontario stands in terms of the other legislative jurisdictions in the country, as well as at Westminster, what I've done is prepare another document. That is the second submission that is attached to what is currently before you. It is a document entitled *Status of Non-Aligned Members in Parliamentary Jurisdictions*. I'm not going to go through this entire document, but what I will do is try to summarize where Ontario stands and where some of these other jurisdictions stand in terms of the provisions there are for independent members.

First of all, I would say that Ontario and New

Brunswick are at one end of the spectrum. I would say that there are a certain number of standing orders—I will not say that there are a large number of standing orders—that have certain restrictions on what independent members can do. These two jurisdictions, New Brunswick and our own, have some restrictions with respect to members' statements and ministerial statements, and in the case of Ontario, oral questions. You won't find that with respect to New Brunswick.

Basically, you find that in Ontario and New Brunswick, certain of the standing orders have been drafted from the perspective of a member of a recognized party. As opposed to the standing orders saying "a member" or "the member," it's "a party member." That's how these standing orders have been drafted.

In the case of Ontario, I can tell you that it didn't always use to be that way. Before 1970, our standing orders were drafted from the perspective of an individual member, but as of the 1970 standing orders, and this became increasingly so in the 1978, 1986 and 1989 versions or revisions of the standing orders, a lot of the standing orders were redrafted so that this expression "a member of a recognized party" came to have the kind of prominence that it currently has in our standing orders.

Continuing along the spectrum, there are about four provinces, together with Westminster and the House of Commons in Ottawa, whose standing orders are drafted from the perspective of "a member." They don't have this expression "a member of a recognized party." There are certain provisions that you'll find with respect to those six jurisdictions. In a lot of them, independent members can serve on committees. For example, that's the case in Ottawa and in Westminster.

Moving further along the spectrum—I would say this is at the opposite end of the spectrum from Ontario and New Brunswick—are those two jurisdictions, Quebec and Alberta in particular, that provide quite a bit for independent members. In Quebec's case, there must be about 10 standing orders that say the President of the National Assembly has to take into account the rights of independent members in certain parts of the procedure.

In the case of Alberta, its provisions have not been incorporated into the standing orders, but there is a written administrative policy that has recently been adopted with respect to independent members, and so in Alberta's case these provisions provide for members participating in question period, serving on committees, and in addition there's an allowance in lieu of a research allowance that caucuses currently get. So they



go quite far along. What I'm saying is that there is a spectrum here, and members may find this information useful in the course of their deliberations as to how they're going to come to grips with the issue that is currently before this particular committee.

I will say in closing that a lot of the issues that have been discussed in the past two meetings of this particular committee have been played out in other jurisdictions as well. There are these tensions between the rights of members who belong to parties as opposed to independent members, and in fairness, in a lot of those jurisdictions, the tensions really haven't been resolved. Those tensions are still there because there is this interplay, and in some cases, there has been a *modus vivendi* as to how to proceed.

I leave those comments with you and I'm happy to take any questions you have. I'm also happy to undertake any further research that is necessary. The research that I did here was from the perspective of the standing orders of other jurisdictions, as I say, and that's what it was limited to.

**Mr Gordon Mills (Durham East):** Peter, I really appreciate this document in sort of coming to grips with some of the concerns and questions I had. I suppose that I should know the answer, but no independent member has ever been elected as an independent member to the Ontario Legislature, is that correct?

**Mr Sibenik:** To my knowledge, that is correct. Certainly, it is the case with respect to post-Second World War. There were more independent members, I would say, in pre-Confederation times.

**Mr Mills:** I see.

**Mr Sibenik:** But afterwards, and certainly after the Second World War, it's all been the emergence or the rise of the political parties, and that's why we stand where we do today.

**Mr Mills:** My perspective on this whole issue, and the member for Victoria-Haliburton will not buy into it, is that it's an absolutely different game plan if I'm elected as an independent to be here than if I become an independent subsequent to that. I know my colleague will not buy into that.

Another thing I think of is that in Ottawa I can remember a fellow—I think it was Tony Roman—who was elected as an independent member just outside of this jurisdiction, I think it was just outside of Metropolitan Toronto.

**Mr Dennis Drainville (Victoria-Haliburton):** North York.

**Mr Mills:** Pardon?

**Mr Drainville:** The federal riding of North York.

**Mr Mills:** Yes, and that gentleman ran as an independent, was elected as an independent and I suppose laboured through all the frustrations that are here, but

again I think the folks who elected that gentleman must have known that they were up against the eight ball. I think he lasted one term before he was not re-elected. I feel that tradition and the way things are done—if someone is elected as an independent, then we should really look at and study this, but if someone is not elected as an independent, I have some difficulty with that because, I say, what do the folks who elected a member for whatever party think of this? Are they getting the representation they sought? This is rather draconian. I would think that if someone chose to be an independent, he should automatically go back to the people to see if they want that sort of representation. Those are my comments.

**Mr Sibenik:** I would say in response that it is a very rare situation in our parliamentary history in Canada that members do get elected on the independent ticket. It is normally the case that if there are independents, it is because somebody has left a recognized political party.

**Mr Mills:** Yes.

**Mr Sibenik:** That's been the history in Ontario and in most jurisdictions.

**Mr Mills:** That is why we have this situation that we have, in effect, isn't it, that you can't do this, you can't do that? My way of feeling is that it upsets the complete balance, because one person then would have more rights as an independent than I would have as a member of a recognized party. That's my feeling. Anyway, you're not here to argue that. Thank you very much, Peter.

1800

**Mrs Margaret Marland (Mississauga South):** I wonder, Peter, could you tell us, on page 3 where you have the summary of what applies in Ottawa, does that apply if you become an independent member during the term of your office? It probably must. To follow on Gord's point, if you run as an independent and you're elected as an independent, these rules apply. But my question is, if you elect to vacate your seat as part of a caucus and sit as an independent, these rules must also apply in Ottawa.

**Mr Sibenik:** I will say that with respect to Ottawa and all of the jurisdictions that corresponded with me, there was no distinction placed on a member who is elected on the independent ticket, as opposed to a member who becomes elected with respect to a political party and then, in the course of his term, becomes an independent member. So I would say that these rules do apply to independent members generally and that the situation, in Ottawa, of course, is not unlike our situation here and in other provinces, that the reason they're independents there is that they choose to become independents after their term of election.

**Mrs Marland:** Since this material has just been

handed out and since you did not intend to go through all of it, and it's very difficult to read eight pages while you're talking, can you just tell me whether the majority of provinces in Canada are more or less close to the Ottawa situation, since that's the one I have had time to read, in terms of the opportunities an independent member has in those provincial legislatures?

**Mr Sibenik:** I would say the other jurisdictions are quite liberal in the provisions they have for independent members.

**Mrs Marland:** All of the other provinces, or the majority of them?

**Mr Sibenik:** I would say the majority of other provinces. There is one jurisdiction that I mentioned at the outset of my submission that probably has more restrictions, but I think it's fair to say that most of those other standing orders of those other jurisdictions are written or drafted from the perspective of a member, as opposed to "a member of a recognized party." By virtue of that, it's so much easier for an independent member to have a say, whereas in our case, I've taken a look at the Legislative Assembly Act and our standing orders and there must be at least 15 provisions that mention the expression "a member of a recognized party." When that happens, of course, there are certain—

**Mrs Marland:** That's the exclusion.

**Mr Sibenik:** Yes.

**Mrs Marland:** As soon as it says "a member of a recognized party," that becomes the exclusion for that individual.

**Mr Sibenik:** Yes.

**Mrs Marland:** You know, obviously, it's a brand-new subject for us in our Legislature and therefore it's not an easy subject for us. I find it difficult, from the standpoint that I hear very clearly what Mr Mills said when he said, "When you're elected as a representative of a party, then the majority of the people in your riding have elected you because you said, 'I'm'—whatever party you are when you run. But I also extend what happens after we're elected; after we're elected, we represent everybody in our riding.

I enjoy that in my riding I represent 100,000 people, regardless of what political affiliation they may or may not have, and I'm very cognizant of the fact that I'm elected by about 47% of the electorate, which is a good year in a provincial general election. Once we are elected to office, we are elected to speak and serve on behalf of everyone, regardless of party.

**Mr Mills:** Point of order, Mr Chair: I believe that the committee is only authorized to sit till 6 of the clock, and that it being past that hour, an adjournment is in order.

**The Chair:** It's in order, so this committee will be adjourned until next Wednesday. Mr Drainville, I've got you down for a question. We'll be in camera next Wednesday, or if you want to speak to Peter before he leaves—

**Mr Drainville:** No, I would like to correct some of the inaccuracies.

**The Chair:** Okay. Thank you. This committee is dismissed.

The committee adjourned at 1806.









## CONTENTS

Wednesday 23 June 1993

<b>Role of the independent member</b> .....	M-23
Peter Sibenik, procedural research clerk, committees branch, Office of the Clerk	

### STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

- \***Chair / Président:** Hansen, Ron (Lincoln ND)
- \***Acting Chair / Président suppléant:** Mills, Gordon (Durham East/-Est ND)
- Vice-Chair / Vice-Président:** Farnan, Mike (Cambridge ND)
- Johnson, Paul R. (Prince Edward-Lennox-South Hastings/PrinceEdward-Lennox-Hastings-Sud ND)
- \*MacKinnon, Ellen (Lambton ND)
- \*Mathysen, Irene (Middlesex ND)
- McClelland, Carman (Brampton North/-Nord L)
- \*Morin, Gilles E. (Carleton East/-Est L)
- Owens, Stephen (Scarborough Centre ND)
- Sterling, Norman W. (Carleton PC)
- Sullivan, Barbara (Halton Centre L)
- Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)
- \*Wessenger, Paul (Simcoe Centre ND)

*\*In attendance / présents*

#### **Substitutions present/ Membres remplaçants présents:**

Hope, Randy R. (Chatham-Kent ND) for Mr Paul Johnson  
Marland, Margaret (Mississauga South/-Sud PC) for Mr Sterling  
Mills, Gordon (Durham East/-Est ND) for Mr Farnan  
Murphy, Tim (St George-St David L) for Mrs Sullivan  
Tilson, David (Dufferin-Peel PC) for Mr Villeneuve

#### **Also taking part / Autres participants et participantes:**

Drainville, Dennis (Victoria-Haliburton ND)  
Rizzo, Tony (Oakwood ND)

**Clerk / Greffière:** Mellor, Lynn

**Staff / Personnel:** Yeager, Lewis, research officer, Legislative Research Service

CAZPN  
XC20  
-L20

Government  
Publication



M-5

M-5

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Intersession, 35th Parliament

## Assemblée législative de l'Ontario

Troisième intersession, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 14 September 1993

# Journal des débats (Hansard)

Mardi 14 septembre 1993

## Standing committee on the Legislative Assembly

Role of the independent member

## Comité permanent de l'Assemblée législative

Le rôle du député indépendant



Chair: Ron Hansen  
Clerk: Lynn Mellor

Président : Ron Hansen  
Greffière : Lynn Mellor



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



# LEGISLATIVE ASSEMBLY OF ONTARIO

M-27

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Tuesday 14 September 1993

The committee met at 1032 in the Humber Room, Macdonald Block, Toronto.

### ROLE OF THE INDEPENDENT MEMBER

**The Vice-Chair (Mr Paul Wessenger):** The proceedings will commence today with a review by Peter Sibenik.

**Mr Peter Sibenik:** Thank you very much, Mr Chair, and thank you for having me here again. What I've prepared for the committee today is a memo. It's a one-page memo and as an appendix to it there is my previous memo, which members may have reviewed from the previous meetings of this committee in June.

What I'm going to do here is get down to brass tacks and identify the specific standing orders that might be affected by the deliberations of the committee today. If you would please turn to appendix A, the very first page, we'll do this in conjunction with the standing orders. You have a set of standing orders with your materials.

The very first standing order that I want to refer to is 28(g), and perhaps I can just read that. This standing order deals with deferred divisions and it basically says, "During the ringing of division bells as provided in clause (f), the vote may be deferred at the request of any chief whip of a recognized party in the House." It goes on, but the key provision in there is that it says it has to be done by a chief whip of a recognized party in the House.

Members may be puzzled as to why this provision is included in this memo, but I think it exemplifies the fact that there are a number of standing orders that are phrased in terms of certain party officers having certain kinds of responsibilities, the chief whip in this case. The question that the committee may in the course of the next few days want to consider is, for example, whether the committee wants to go to the extent of recommending a situation where an independent member can request a deferred division. I will say, however, that no other jurisdiction in the Commonwealth, I believe, extends this particular right to any independent member. However, it's one of the more obscure features in the standing orders that I thought I would turn your attention to.

**Mr Norman W. Sterling (Carleton):** Are you saying that you don't have the right to defer a division or to call a division?

**Interjection:** To ask for it.

**Mr Tim Murphy (St George-St David):** Only House leaders.

**Mr Sterling:** Ask for a deferral?

**Mr Sibenik:** That's right.

**Mr Sterling:** One of the things that I think you've missed here is that I think the biggest problem an individual member has, an independent or not, is that he doesn't have the right to vote in the Legislature if he wants to vote in the Legislature and be recorded. I think that is a huge, huge deficiency in our standing orders.

House leaders aren't going to agree with me and parties aren't going to agree with me, because sometimes parties like to say: "Hey, we don't want to vote on this. We'll let it go on a voice vote," or whatever, "and we won't cause anybody any embarrassment. They won't have to stand up and be counted." But if one of the independent members felt very strongly on an issue and the two parties or all three parties said, "Hey, let this go and let sleeping dogs lie," which happens from time to time, the independent member is out of luck.

I can remember when I wanted to vote very strongly against the extension of separate school funding, Bill 30, and I couldn't get any of my party to stand up, because we needed five members, and it was the New Democratic Party which gave me the support in terms of allowing me to vote. The vote was 117 to 1; I was the one against. But I wanted to be recorded as voting against that, and so I have always thought, quite frankly, there should be a division when any member of the Legislature wants a division. That has always been my position, and I think it's an issue which maybe members of the Legislature or this committee might want to consider. I think five members is far too many in order to force a vote. But again, it's a weakening of the party system as such, and you have to recognize that when you go that way. I've always thought it was passing strange that you'd be elected down here and that if you feel strongly on an issue, you don't have the right to have your name recorded yea or nay. I think it's a point that should be included.

**Mr Sibenik:** It's an additional point, yes, that can be considered by the committee as well.

The second provision that I want to alert you to is the second bullet item in the memo, and that refers to members' statements. If you would turn to standing order 31, you will see the specific provisions that we have right now with respect to members' statements.

Standing order 31(a) says the following: "A member, other than a leader of a recognized party in the House or a minister of the crown, may be recognized to make a statement for not more than one and one-half minutes."

However, that standing order is subsequently delimited by standing order 31(b), which goes on to say, "Up to three members from each of the recognized parties in the House may make a statement during the period for 'Members' Statements'." Then it goes on in standing order 31(c) to actually specify the rotation that will occur. It's these particular provisions, in particular 31(b) and (c), that tend to prevent independent members from being allowed to make a member's statement.

Perhaps at this point I should indicate that there used to be a time when our standing orders were not phrased in terms of a member being a member of a recognized party. It just said "members" or "private members" or something along those lines. However, since 1970, standing orders have been progressively amended—it didn't happen at one time, but it happened in successive stages—so that the members' entitlements, to a certain extent, became a function of being a member of a recognized party, and this is one of the provisions, actually, that has happened.

**Mr Murphy:** What's the number a member's party has to have to be recognized for the purposes of the rules? Is it 12?

**Mr Sibenik:** It's generally perceived to be 12, although there's nothing in the standing orders that specifically says that a recognized party is defined as 12 members. However, if you take a look at the standings of the parties since the late 1970s, I believe, all the parties have had more than 12 members, and so it's generally perceived to be 12 although there's nothing defined per se in the Legislative Assembly Act or the standing orders to that effect.

**Mr Carman McClelland (Brampton North):** Have we effectively borrowed that from the House of Commons? You're indicating it has more or less evolved since the 1970s. Is there a benchmark elsewhere in our system that specifies numbers with respect to official status? Quite candidly, I always believed it was 12. I just presumed, until you corrected me, that it was enshrined somewhere, and so I'm curious as to if it does in fact exist perhaps in one of the sister parliaments or in the senior House in Ottawa.

1040

**Mr Sibenik:** There are different provisions in different parliaments. I'm not sure that we have borrowed from other parliaments, to tell you the truth, but it has been widely perceived to be 12, but that's only because there have been more than 12 members per party for quite a while. That poses a problem that perhaps the committee might want to address: the number of members that is required to form a recognized party. It certainly poses a problem. What happens if a party in the House has fewer than 12 members? Then everything is thrown into some kind of difficulty.

**Mr Sterling:** I don't think we have to worry about that.

**Mr Sibenik:** There are certain blocking provisions in the standing orders that specify 12 members, and that's what perhaps everybody is thinking about.

**Mr Sterling:** It was not 12 before; it was 20 before.

**Mr Sibenik:** Yes, it was reduced to 12.

**Mr Sterling:** That's right. It was reduced to 12 after we went to 16 after the 1987 election. I guess the upside of putting something in here is that it becomes more definitive, but the downside is that if a party falls below 12, then the House leaders can get together and make a compromise or whatever in order to strike out.

Does the Board of Internal Economy, in terms of the financing of the research departments, have a rule as to what a party is?

**Mr Sibenik:** I don't believe it's enshrined in any of the minutes of the Board of Internal Economy, but the board does have some kind of say in the level of funding that is given to each of the party caucuses. I believe the presumption on their part is 12 as well. I don't think the problem has ever been specifically put to the board in view of the fact that we've been going along this far, it seems to me. That's my understanding of this situation.

**Mr Murphy:** The reason I raised the question is that it obviously, it seems to me, frames the issue about who an independent member is. Once you fall below whatever that threshold is—and while I recognize Mr Sterling's point about how defining a number in the standing orders may reduce some flexibility if a party goes, let's say, to 11, I suppose in theory you could none the less amend the standing orders as part of the House leaders' negotiation. It just requires a further level of amendment at some point, of agreement to all so it's not just, "Do what you want to do," as a compromise among the three parties, but you then reflect that by way of amending the standing orders.

But if we're going to debate what an independent member is or is not allowed to do, you have to define both the lower threshold and the upper threshold. That's why I raise the issue of what that is. Therefore, it seems to me we have to, if we're going to have a sensible discussion, define what we believe that upper threshold to be, of how many people may be elected under a party label that doesn't fit within a certain number qualify as independent for the purposes of our standing orders as currently drafted.

**Ms Akande:** Further to that, one of the things that's certainly going to influence our decisions around what powers or what abilities or what responsibilities and leverage an independent member may have will be what threshold we set as being appropriate for a party, because it certainly will influence what it is that we want to assign to them. I think that's a very important question and maybe one that we should be discussing before we discuss the others: whether or not we're



going to leave it as vague and flexible as it is so that it can be redefined according to need, or whether in fact we want to put some specific number to that, because that really should preface the discussion of the other.

**The Vice-Chair:** Peter, I guess you can continue now, unless there's further clarification on this point.

**Mr Sibenik:** The third item that we could talk about is ministerial responses. If you could turn to 32(e) and 32(c), 32(e) reads as follows:

"Following ministerial statements a representative or representatives of each of the recognized opposition parties in the House may comment for up to a total of five minutes for each party commencing with the official opposition."

Here we see there's not really any place for independent members to make a comment on a ministerial statement, and the committee will want to consider perhaps the extent to which the independent members should or should not be entitled to make such a statement.

The other provision that I draw to your attention is 32(c). This provides that copies of ministerial statements are to be delivered to the opposition party leaders or to their critics at or before the time the statement is made. This is another provision, I believe, that impinges on the ability of independent members. It's related to the other one as well. I just draw that one to your attention.

In fairness, I don't think this particular provision was mentioned by any of the independent members we heard from at our June meetings. It seems to me those members were primarily concerned about members' statements, oral questions, private members' business and participation in committees. I've looked at the committee Hansard for our June meetings and it was those four particular issues that the independent members we heard from seemed to be concerned about. I don't say that they were exclusively concerned about just those four, but those are the ones I picked up, so this one here was not particularly flagged.

The next item that I have in my memo is the ability to ask a question in the oral question period. If you could turn to standing order 33, you will see how that is phrased. Standing order 33(a) sets the general parameters for oral question period. It's one that I'm not going to read, but I think members of the committee can see how it is generally structured.

Standing order 33(b), just below, is of some interest to us because it specifies the order of questions and in fact the rotation. It specifies that it belongs to the parties. It specifically refers to the opposition parties, to the leaders of the opposition parties being entitled to leadoff questions, two for each leader, and it then provides that the single questions that follow are in rotation for the parties. Again, the reference is to parties there. If the committee is going to consider some

change to that, I just draw that to the committee's attention.

The next provision that I want to draw to your attention is standing order 38(c). This deals with the compendia of background information. It says, "On the introduction of a government bill, a compendium of background information shall be delivered to the opposition critics." This seems to presumably exclude this compendium being given to independent members, although I'm not sure the extent to which these are delivered to persons other than opposition critics.

If you turn the page on my memo, you'll see that the next item deals with the statutory reports. With these particular reports, if you look at standing order 39(d), it seems to suggest that independent members don't really have an entitlement to receive a statutory report. Again, they do go to the opposition critics.

#### 1050

The next item that I'd draw to your attention is opposition days. If you take a look at standing orders 42(b) and (c), 42(b) says, "The opposition days referred to in clause (a) shall be distributed among the recognized opposition parties in proportion to their membership in the House." Clause (c) specifies that the notice comes from "a member of a recognized opposition party." So there's another provision the committee may want to consider.

The next item that I draw to your attention is want of confidence motions. If you take a look at standing orders 43(a) and (b), those are the provisions that seem to disentitle independent members from moving a want of confidence motion or even participating in deciding when the motion is going to be debated.

The penultimate provision that I want to draw to your attention is a fairly obscure provision in the standing orders. Standing order 44(b) deals with debates on a motion for discussion of a sessional paper.

The very last item that I draw to your attention is private members' hour. If you take a look at standing order 96(d), standing order 96(d) suggests that,

"The order for consideration of the items of business for each party shall be determined by a ballot conducted by the Clerk prior to or at the commencement of each session in which all private members may enter their names for the draw."

You'll see that particular standing order is initially phrased in terms of being a party member. It says "for each party" in the first and second lines, but then towards the end of that standing order it says "all private members." That poses a certain kind of difficulty.

This same difficulty is reflected in standing order 96(c), which deals with the time allotment given to private members' hour. If you take a look at standing order 96(c)(i), it refers to "the member moving a



motion." If you look at (iii) there, it says "the member moving the motion" again. However, if you take a look at the intervening item, 96(c)(ii), you will see that the standing order appears to be phrased in terms of representatives of each recognized party.

Basically, what I'm saying is that for both standing order 96(d) and (c) there's a bit of confusion as to how to proceed. I'm not sure that I know how this would be interpreted. I think it's really a matter for the Speaker to rule on, and I'm not really capable of giving an interpretation to a standing order that is very difficult for most people to interpret. I draw that to your attention as well.

Those eight items that I've just indicated deal with items in the House. There are certain other items dealing with the committees that members may also want to turn their attention to, and I've made a list of these.

**Mr Sterling:** Before we go to those, can I ask you, Peter: the one thing you haven't included here is the power an individual member now has, which we may want to trade off with an independent. For instance, a member—not an independent member, a member, because we don't distinguish between an independent member—can stop a unanimous consent in the House; therefore, a very obstreperous independent member may block, for instance, something they don't want.

**Mr Gilles E. Morin (Carleton East):** Anyone can do that. You did that yourself.

**Mr Sterling:** Oh, yes. That's right.

Presumably within a party there are other pressures for you to be concerned about, your colleagues and what else is going on etc etc. So you have your House leader, you have your whip, you have your other party members saying, "Look, we have to deal with this matter; we should deal with this matter," etc. An independent member sitting on his or her own doesn't have those same kinds of pressures to cooperate, and therefore we might want to consider that for unanimous consent it has to be two members who will vote. I just throw that out as one example.

The other example where an individual member has an extreme amount of power is when the bill is reported to the House and the Speaker says, "Shall this bill be ordered for third reading?" As an individual member, I can force that bill into committee of the whole House and therefore prolong the debate and prolong the legislative process by doing that.

I don't know if there are other examples that other members know about where an individual member holds significant power, but those are two that I can think of, and I think we should think about those in terms of what we're doing here.

I guess the prime example didn't happen in our Legislature but during the constitutional debate. That's

where Harper in effect scuttled the whole idea of having a vote on the Constitution. Quite frankly, I don't think he had the right to stop a vote on that very important issue in that Legislature no matter how strongly he felt on it, but he used whatever standing orders were there for him to stop something. Perhaps we should consider that here. I don't know.

I just throw those two issues on the floor for consideration. I don't know if any other members have thought about that part of it, but it's the tradeoffs that we're talking about here.

**Mr Murphy:** I think it's a fairly complicated set of things, and I agree that there really is a hierarchy of things we're looking at. An individual member's role as an individual or private member is one set. Then you have the role of a member as a member of a caucus, which is another set. I think there are some functions in the House which are clearly part of a member's representative function in the sense of representing the riding. There are others which are clearly a member's function, generally, as part of a party, a part of a set of values, positions, whatever, that make up a party. There is—and I think your point is well taken that it's not necessarily well thought through—the distinction between those two functions in the standing orders.

I look at the whole question, for example, of some of what Peter has pointed out in his paper, getting compendia, opposition responses. There's a degree to which that is more, frankly, a function of the member's role as part of a caucus, as a set of values, as positions. Alternatively, for example, members' statements I can see as entirely really a private member's role and as more independent from the caucus because that's the opportunity for private members to be more representative of their riding. To a certain degree, I think questions serve two functions. One can sometimes be representing the party or caucus position and sometimes it's just representing a sole riding interest.

I think we need to have a more clear sense of which of those roles are being served in certain things identified in the standing orders, and in some cases where it's much more for a private member's role, for example, private members' hour, as it's called, the role of an independent member in that context makes a lot more sense because that's the representative function of the riding. As it gets more into reflecting policy positions in a broader sense, I think the role of the private member drops, and that also can be reflected, as Mr Sterling quite rightly pointed out, in the issue of unanimous consent provisions, where you've got to think about the representativeness from a riding level versus the representativeness of a policy or set of values level. I think we have to look at all of those issues from that sort of dual purpose of a member perspective.

**The Vice-Chair:** I guess, Peter, you can continue now.

**Mr Sibenik:** I will say, just in response to Mr Sterling's comment, that there certainly are a great deal of things that independent members can do around here, it seems to me. I guess I should say that my memo was not phrased in terms of what independent members can do but in terms of what they cannot do. There is a whole range of things, as you indicate, that they can do.

1100

The other thing is that you mention a provision dealing with unanimous consents. Perhaps you're very well aware of the situation in Ottawa where the standing orders have evolved—I believe the last changes to the standing orders have indicated that it requires a certain number of members to block a unanimous consent provision. If the committee is going in that direction, I think the Ottawa standing orders might be of some assistance.

**Mr Sterling:** You see, what we're talking about here is the right of representation, so we're talking about not only the right of people like Mr Sola, who are independents, but we're also talking about the rights of the rest of the people. Those rights may be blocked by an individual in the Legislature and I may be denied the right to vote on an issue because somebody else has decided to take a certain course.

Therefore, I'm very much concerned with the existing rights once you start to go into the realm of independent members, because when you give rights for people to intervene, you're also giving the rights to block and to delay and to prevent certain things from happening in the Legislature, which heretofore haven't been a problem because most people have been under a party mechanism and those party mechanisms have worked to convince the individuals to act in reasonable fashions; therefore, for people to step outside of that has been very infrequent.

**Mr Norm Jamison (Norfolk):** I think the question is an interesting one because we keep bouncing back and forth between the recognized party system and the member's individual rights as a member of the Legislature. If you were to assess that on the basis of 130 members making a statement in the House every 130 statements, that would be the fair and equitable situation at that point in time. We're starting to confuse the party representatives in committees with individual members, and they're completely different. The majority has rights; the minority has rights.

If I look at the federal situation, which could very well end up being reflected in future provincial parliaments, the potential, for an example, to have six or seven parties is out there.

If you were to look at page 82, section 110—before we look at that, we've talked about downsizing committees as far as saving money on travel, and there's been some talk about that—"No standing or select committee shall consist of more than 11 members and the member-

ship of such committees shall be in proportion to the representation of the recognized parties in the House." As far as committee work is concerned, you open a large can of worms there.

I'd just say we have to be very cautious about extending rights to individual members that would in fact exceed in some cases the rights that individual members have under party status at this point. I think that's a very significant question. I think all of us come here with a sense that we want to be fair and reasonable about things, but having said that, if you're to look at members' statements and if I were an independent, the most I could hope for would be that once every 130 statements I would receive a statement, whereas in a party system, depending on the importance of the statement within the party, you can give two or three statements in one week.

**Mr Noble Villeneuve (S-D-G & East Grenville):** And depending on your behaviour.

**Mr Jamison:** We're confusing, as I say, the party system with the individual member's rights. If the individual member's rights were weighed out, the most that individual member could expect, in fairness, would be to give one statement every 130 times. People tend to confuse the established, recognized system here when it goes to committees and so forth. If you have six recognized parties in the House, what would the committee makeup be, and then where would an independent be on that committee? I ask you to think seriously about that because that is a potential these days.

**Mr Sterling:** I've sat through two minority parliaments and, quite frankly, committees work better in minority than in majority parliaments. The fears of majority members, as they're put forward, are basically ill-founded. You couldn't convince me of that between 1981 and 1985 when we were a majority either.

**Ms Akande:** I haven't had the experience of Mr Sterling so I find his comments interesting, but more than that—I understand the concern of my colleague in terms of numbers, but I can't argue the omission of points of view on committees because of the efficiency of fewer numbers, especially when you recognize—and I think that we have to recognize it and we have to consider it—that more and more those who elect us are feeling less and less represented by views and decisions that are made here. That's a reality, and if we're going to continue to espouse the principles of democracy we have to, in fact, design a system which still allows individuals to feel represented in this place and at the same time allows for the efficiency of committees.

It may well be that there may have to be some reduction in terms of government and opposition members in order to allow for—I'm talking about proportionally—the involvement of independents, at least on committees that are most relevant to their needs.



**Mr Sterling:** Can you answer this question for me today? I know that any member of the Legislature can walk into any committee. You have that right and you have the right to speak on any committee. Can a non-sitting member pose a motion, or do you know?

**Mr Sibenik:** No. According to standing order 126, there are certain restrictions on what a non-member of a committee can do. The member can't be counted as a quorum, can't move a motion or vote. The member can participate; however, an order of the committee can delimit the extent to which a non-sitting member can participate in committee hearings.

**Mr Sterling:** So the answer might be, for instance, that you might be able to move a motion but you may not have the vote.

**Mr Stephen Owens (Scarborough Centre):** Isn't there also a corresponding deduction of time from the particular party that that individual would represent? That seems to have been my experience in standing committees. Auto insurance particularly comes to mind, where there were some folks that were wanting to sit in and participate, and it was the view that the participation time that was taken by the members would be deducted from the government side. Is that—

**Mr Sibenik:** There's no particular standing order to that effect, but those kinds of things are generally worked out in the committee in consultation with members and the Chair of the committee. There's no specific provision.

I was going to head to the provisions dealing with the extent to which independent members will be implicated by virtue of their ability to participate in committees. In section C of my memo, I've indicated that there are certain things that independent members cannot do, and I will say, as I've said here, that the independent member falls in the same position as any other non-sitting member of a committee, so if the independent member is not a sitting member of the committee, then there are certain things that he or she cannot do.

1110

The perspective that I want to take on these particular bullet items that I'm going to go through is, if there's going to be a rule that will permit independent members to sit on committees, there might be other standing orders that will have to be changed or altered, and there are a fair number of them. But I'll go through them individually, and I'll just indicate what I mean by this.

The first one is standing order 110(c). It deals with temporary substitutions. Here's the scenario that I pose: If there's only one independent member on that committee, should that independent member be allowed, by some vehicle, to have a temporary substitution for him, say another independent member? I'm not certain.

Maybe the answer is so obvious that it doesn't need posing, but this particular provision we have, standing

order 110(c), is phrased again in terms of members of a recognized party. It says that "the whip of a recognized party" has the right to file the temporary sub slip. Of course, it goes without saying that an independent member does not have a whip, and therefore, should the standing order be changed to reflect the fact that perhaps independent members might want this particular right? I'm not certain about this. I just throw that out for some information, for discussion, and I just draw it to your attention.

The next provision that I want to draw to your attention is one that I've already indicated. It's standing order 126. It basically says that a non-member of a committee cannot vote or move a motion in committee or be part of any quorum. I don't think this one would really affect independent members very much because of the fact that an independent member would be part of the committee. Therefore this particular standing order would not really have to be altered in that event.

The fourth item that I draw to your attention is the estimates selection process. If an independent member is a member of the standing committee on estimates, should such an independent member be allowed to participate in the estimates selection process? If you turn to standing order 59, you'll see exactly why I pose this particular issue. Standing order 59 suggests that the estimates are "selected in two rounds by members of the committee." But it goes on to refer to the fact that the actual selection is done by "members of the party forming the official opposition," "members of a recognized party having the third-largest membership in the House" and then members of the government party. It doesn't say anything about independent members.

As I say, if we have independent members, if we have a rule that says independent members can be a member of the standing committee on estimates, this particular provision may pose some difficulty. That's standing order 59(b) that I flag to your attention.

If you take a look at standing order 59(d), that's a related provision. There are 90 hours, of course, for the selection of the estimates, and this particular standing order says how the ministries and offices are to be chosen and the amount of time for those ministries and offices, and it again refers to parties as opposed to members.

The next item that I draw to your attention is whether an independent member can be elected Chair or Vice-Chair of a committee, and I draw standing orders 113 and 114 to your attention. Standing order 113 says that the Chair and the Vice-Chair are selected at the outset of a session of Parliament. Standing order 114(a) then goes on and says that the Chairs of the standing committees are to be distributed in proportion to the representation of the recognized parties in the House. This poses some difficulties as to whether independent members, therefore, can be elected Chairs. Now, it



doesn't say anything about Vice-Chairs being in proportion to the representation of the recognized parties; it just refers to Chairs.

**Mr Sterling:** Where does it say that we couldn't select an independent member? In other words, the parties could choose an independent member to be Chair of a committee, is that not correct?

**Mr Sibenik:** It doesn't say that in here.

**Mr Sterling:** Yes, so it doesn't deny them the opportunity totally.

**Mr Sibenik:** This is true, yes. It's just that I think that it would be ambiguous because of the existing provisions in there. That's all that I indicated.

**Mr Villeneuve:** The more we go along here, the more interesting it is. Should there be recognition between an independent member who is elected as such and an independent member who for his or her reasons has chosen or has been forced to become independent? Slightly different type of a politician.

**Ms Akande:** Slightly different circumstances.

**Mr Sibenik:** If you're looking for a preliminary kind of response from me, there really isn't a procedural distinction and it's not really something that I can comment on. That is something that has to be discussed by this committee. But to say that there is something in the standing orders that says that there is a procedural distinction, I don't think the standing orders indicate that.

However, the fact that it is a procedural occurrence if a member crosses the floor from one of the recognized parties and becomes an independent member, I would think that it would be a procedural occurrence as well if it happened the other way around, from independent to recognized party. However, it is a procedural occurrence, but I don't think there's anything that turns procedurally on it, and so it's something that basically has to be worked out, I think, by members of the committee.

**Mr Villeneuve:** I certainly think the circumstances are very different and I think it certainly bears scrutiny by this committee, and maybe we should address that initially, but I think it's time to bear that in mind as we go through the procedure.

1120

**Mr Morin:** Peter, do you know how many elected independent members there were or have been in the history of Ontario?

**Mr Sibenik:** This is a difficult question. There have not been very many at all. I don't think there has been one since the Second World War. It's difficult going back to the Canadian Parliamentary Guide. I've gone through that.

**Mr Sterling:** I don't know what you call an "independent." Do you call an "independent" one who comes

in and gets elected as one member of what he calls a party?

**Mr Morin:** A Liberal or Conservative independent.

**Mr Sterling:** Wasn't there a Communist in the late 1940s?

**Mr Murphy:** Joey Salsberg.

**Mr Sterling:** Yes. Was he Communist?

**Mr Murphy:** Yes, he was a Communist, I think; a Communist independent in what's-his-name's riding. Allan Grossman won the seat from him.

**Mr Sterling:** Yes, Allan Grossman won the seat from him, but that's the only one I know of.

**Mr Murphy:** I vaguely recall—I think it was the Second World War period—the independent Liberal-Labour members being elected.

**Mr Morin:** You were very young then.

**Mr Murphy:** I was very young then, but it's a vague memory. It's sort of a Conwaysque memory, actually. But I'm wondering, were there any rules that applied to independent members at that point?

**Mr Sibenik:** No, because at that particular time—

**Mr Murphy:** There were no rules.

**Mr Sibenik:** —the standing orders were phrased in terms of members, not in terms of members of recognized parties. So there weren't any specific provisions for independent members. I will say that there were quite a few independent members who were elected some time between Confederation and about the Second World War. In that period of time, there were, I'd say, perhaps more than five members who were elected as independents. That's my interpretation from my review of the Canadian Parliamentary Guide.

But it's difficult, because there's really no paper trail that has been left for members who were elected way back when, so there's some difficulty in putting together numbers. But I would say that there's been no independent members that have been elected since the Second World War, it seems to me. There are a whole range of smaller parties, such as Communist, Labour-Progressive, Liberal-Labour, the Labour Party, the Soldier Party.

**Mr Murphy:** The UFO.

**Mr Sibenik:** There have been all kinds of small parties with just a handful of members elected at any time, but most of that occurred before the Second World War, I would say.

**Ms Akande:** I think this is what makes this job particularly important in that I think that according to the responsibilities and the leverage we give an independent member, we may well see differences in terms of how many of them are voted in or elected in at this particular time. That's what makes this whole discussion and issue so very important, because there is a great interest out there, as one knows, in what happens to an independent member and whether in fact there is a way

of being represented by this group.

The other thing I want to ask for—and someone made reference to it before and it was something that I was considering on the way down. I understand but don't know a great deal about the independent members' operations within the federal process. I'm wondering if there is support for our having some information around that. Is it here? Because I haven't seen it.

**Mr Sterling:** It's on page 3.

**Ms Akande:** Thanks very much.

**Mr Sterling:** It's in the notes at the back of the memo today.

**Mr Sibenik:** It's the fourth last page in the memo. I'll give you some time to read that if you still want to pose the question.

**Ms Akande:** No, it's all right. Go ahead.

**Mr Villeneuve:** The way the standing orders are written now, anyone who does not belong to a recognized party would probably be assumed to be designated as an independent, whether there's a party handle to that individual or not. We may well have that come next election. If a certain political party prior to the election gets six people elected, they will sit as independents regardless of whether they have a party affiliation or not, will they not? The way the standing orders are now written, they would not be a recognized party and therefore would be independent.

**Mr Sibenik:** If the question is addressed to me, they would probably still be a party. They wouldn't be a recognized party. There are certain provisions, actually.

The section on Quebec discusses this in part. What they have is political parties, but then they also have this designation "political group." It's these groups, I guess, that are the counterpart to our recognized parties.

Having looked at the Canadian Parliamentary Guide, I believe these members who had less than 12 or 15 members or even less than five were still called by the name of their party for the purposes of the guide. Whether that's in fact the case in the House would be a difficult situation. It would be difficult for me to say.

It seems to me there's nothing preventing the Speaker from saying, "We have an official opposition, we have a third party, a fourth party," even a fifth party. It can go on like that. There's nothing that prevents that from occurring, although I'm not sure that that has ever occurred in our history. We don't have any practice that specifically says that, but we could theoretically have that kind of situation if there is this kind of splintering or fracturing that members are speaking about.

**Mr Villeneuve:** One of my concerns here, as a member who belongs to a party, and as long as I'm going to be around here, the party willing, I'll probably continue to belong to that party—however, if we make the position of the independent so interesting that it will

attract people who may have a single issue or a lesser number of issues that they want to address, and then they really don't matter, I don't think we can create a situation whereby we promote certain elected members here to maybe become independents. We have to walk that fine line there that says they've got to be recognized, they're definitely elected, but not over and above a backbencher in the third party.

**Mr David Winninger (London South):** I just have a question for Peter with reference to the ability of an independent member to serve on a standing committee in the House of Commons, albeit rarely, you indicate. Would those independent members serve as voting members on committees?

**Mr Sibenik:** The response I got back from the House of Commons did not indicate that. It's something that I'd really have to inquire into, but I would have thought yes. If they serve on the committees, I would have thought that they would have been entitled to the rights and entitlements of any other member.

**Mr Winninger:** This ties in with an issue that we may have to address provincially as well. If we allow an independent member to serve on a standing committee and we don't alter the composition of that committee, we could in fact dilute the government's majority vote on a committee. This is one of the issues that needs to be addressed and I'd be interested in knowing how the House of Commons deals with that, if there is any more specific information available.

**Mr Sibenik:** I'll certainly make inquiries about that, but I would have thought that the composition of the committee was structured in such a way that it ensured that it was generally representative of the standings in the House, not unlike the provision that we have in our particular standing orders.

**Mr Villeneuve:** We also have to remember that if indeed we have only one independent, come whenever, and we allow provision for an independent to sit on all committees, this person could sit on all committees, and that certainly would be a leg up over the rest of us.

**Mr Owens:** I think that's a fundamental question. As a backbencher or as a member of an opposition party, what is it that we want to do with these folks? I understand and take to heart quite directly what Noble's perspective is in terms of what rights are we going to give independents that we as backbenchers and opposition members have. Are we going to put these individuals in a more advantageous position in that they will not have the royalties—

**Ms Akande:** To inhibit them.

**Mr Owens:** To inhibit them, exactly, whether it's conscience or loyalty or the promise of other things.

1130

**Mr Villeneuve:** I think the American system is a good example, where the rebel who breaks party ranks



in a two-party system gets more recognition than the people who assist to make things happen. It's always been that way in the American style; the rebels seem to get some glorification.

**Mr Owens:** But if you look historically at the numbers of people that have ascended to that level, they're very few and very far between. Certainly their politics is clearly more populist than ours has been or will ever hope to be. But, again, in terms of your point, Noble, I understand it directly and the question will come down to: Will I, as a backbencher, stand down my question or you, as a backbencher, stand down your question, that is important to your constituents, to get your message across for your party, in order that an independent member can have that opportunity?

**Mr John Sola (Mississauga East):** I think there are some committees that are traditionally more non-partisan than others, this being one of them, and the regs committee comes to mind as well. I think it's those committees that should probably be targeted for independent members. I don't think it will ever get to the point where independent members will be in such great numbers that they will have to overflow into other committees but, if it does, then that is the will of the people.

As far as the question Noble posed before about how you get to be an independent member, that should probably be a criterion. At the same time, it must be remembered that however you become an independent you still represent a certain number of voters, and those voters should have representation in this House and in the committees, whether you remain a member of the party with which you were elected or whether you are no longer a member of that party. It is something that has to be kept in mind.

One other thing: We're talking about rights here constantly, but I think those rights have to be balanced with responsibility. If any member, be it independent or a member of any party, becomes irresponsible in his or her actions either in committee or in the House, there's a Chairman or a Speaker who is there to discipline that member. So I think we always have one way of controlling uncontrollable elements.

**Mr Winninger:** As an adjunct to what Mr Owens said earlier, aside from a voluntary regime, where a member of one of the three established parties gives up time so that an independent member can ask a question or make a statement, if you want to have a formula for that, because the sands shift—the Liberals had a majority of 95 members and if you take away from that majority the number of members of executive council, it might have left 70 members all vying for time to ask a member's question or make a member's statement.

In our case, for example, if you say we have approximately 50 people who aren't in executive council all wanting to ask questions and make statements, your

rotation might come every five weeks or so, since you only have nine questions and nine statements—

**Mr Villeneuve:** For party privileges.

**Mr Winninger:** Yes, so many per week, so you wait for your rotation. Mr Drainville, in his paper, suggested that independent members be allowed to ask a question and make a statement every two weeks. In a government with a large majority, a member of the government would indeed have less opportunity to ask questions and make statements were we to confer that privilege of asking a question or making a statement every two weeks. I think we have to analyse very carefully the consequences of the rights we might consider bestowing on independent members and measuring them against the rights we may enjoy as members of the government, opposition or third party.

**Mr Sterling:** I don't know how long you go before you start pointing the way towards what you want. As far as I'm concerned, there should be a definition of "party." I like the New Brunswick model, where it's not only based on the number of members but it's also somewhat to do with the proportion of vote that you received in the last election. The way our system now is, if there's a further fraction, you may get situations where—the present government had 37% of the vote and they have 74 seats, which largely outweighs their proportion. On the other hand, I think we are likely to get in future smaller numbers in even the major parties, even though they might have received 20% or 24% or 22% of the vote. I think a combination of the two is what we should be aiming for in a party definition.

I think it should take at least two members to oppose unanimous consent. I think two members should be able to request a vote. I don't care about going into committee of the whole House; it doesn't really matter to me. I think it should be left that one member can refer it into committee of the whole House, mainly for a practical reason: Often there's only one member sitting around or awake to realize that should be done at that time. Big deal if it goes into committee of the whole House. You can kick it out of committee of the whole House if you really want to anyway.

Making a member's statement: I think we have to give discretion to the Speaker and that an approach by an independent member should have to be made to the Speaker that he wants that to happen. The Speaker can tack that on the normal nine statements that are now given so you're not really usurping anybody from giving a statement.

In terms of oral question period there should be discretion in the Speaker, but it should be related to the number of opposition members in the Legislature. In other words, if there are 50 opposition members, then you basically should have a one-fiftieth crack at it. If you want to be that directive in terms of that, I think he should have the right to get a compendium but it should

be up to the independent member to ask; it shouldn't necessarily have to be presented. I think any member can get a compendium to an act if he or she wants one now; it's just the route to which he or she goes to get it. I think you can take care of that pretty easily.

The same with regard to a statutory report: On request, an independent member could have that.

I don't think he should have any rights to opposition days. I don't think he should have any right to a non-confidence motion. We definitely have to put him in the pool in terms of the private members' business.

I think each independent member should be able to select one committee each year. He should have the right to move a motion but not to vote, so it takes care of the problem of whatever, but he still is attached to a committee.

I'm also amenable to Dennis Drainville's suggestion that if you wanted to reconfigure the committee so that a majority government would never be outdone its majority, that's adequate for me as well.

I think there should be discretion at the hands of the Chair of any committee to allow debate by an individual member. I don't think you would have to be much more specific than that. Most Chairs would do it in accordance with what was good taste and fairness to other members.

If individual members wanted to participate in a meeting of the parties during a selection process for estimates, you might want to give the independent member the right to participate in a meeting. They wouldn't have any selections, but they could be there and present if they wanted to make their points in terms of convincing the other parties to select this ministry or that ministry for estimates. I don't think it's that hard. Those would be my suggestions in terms of working towards that report.

1140

**The Vice-Chair:** I think we would probably just go to suggestions at a later date, Mr Sterling, but I think it's valuable you can put them on the record. When we complete Peter's presentation—

**Mr Sterling:** I thought we had completed it. I'm sorry.

**The Vice-Chair:** I don't think we've completed.

**Mr Sibenik:** There are two items left.

**The Vice-Chair:** We should allow him to complete his two items this morning.

**Mr Sibenik:** I'll just do this very briefly. The other thing the committee may want to consider is the extent to which independent members should be allowed to sit on a subcommittee on committee business and participate in the selection of intended appointments for review by the standing committee on government agencies.

Right now, those particular standing orders, standing order 124 and 106(g)2 suggest otherwise that independent members don't have that entitlement. The final provision is whether independent members should be allowed to designate a matter for consideration under standing order 125 and speak during committee consideration to the matter. Right now, according to standing order 125, you have to be on the subcommittee of committee business to designate a matter and, since independent members aren't represented there, that poses a particular difficulty.

That basically completes my presentation of the standing orders that are affected by the committee's consideration of independent members. There's a supplementary paper dealing with what happens in other jurisdictions, which I am not going to go through. I spoke to this briefly at our June meetings and if we want to go in detail on what other jurisdictions have provided for in terms of independent members, I'm perfectly willing to do that, but it would just basically be a review of what I've already written here. If the committee wishes me to proceed either now or some time later in the week, I'd be happy to do so, but otherwise that does complete my presentation.

**The Vice-Chair:** I think we should have a short discussion about how we're going to proceed with dealing with the matter before 12 and then, when we come back at 2, we can hopefully be in a position to have a method of proceeding.

Mr Sterling has already indicated a method for people to put forward proposals, but there are other ways of doing it. You might want to deal with it item by item, or deal with it in an entirely different process.

**Mr Morin:** This afternoon, I'd like to make a presentation of what I feel are some of the proposals that could be presented. I would prefer to wait this afternoon instead of doing it this morning. I don't think we're at the stage yet where we can really make recommendations. There are too many issues involved. I don't expect we'll be able to solve that issue this week; there's too much involved. But at least, if we all have the opportunity of making our point of view known, perhaps this will help the debate at a future date.

**The Vice-Chair:** So, Mr Morin, you're suggesting we open this afternoon with general statements from discussion in general on these issues.

**Mr Villeneuve:** We just got Peter's report this morning and I certainly appreciate the fact that he's covered other provinces and the federal government, which I have not had the opportunity of reading. I think it would be very helpful for members of the committee to maybe set up some sort of a thought process based on other provinces and the federal government which I will attempt to go through rather quickly over the lunch-hour. I think it would certainly help my decision-making process.



**The Vice-Chair:** It seems, by consensus, that we just resume with general discussion this afternoon.

*The committee recessed from 1145 to 1412.*

**The Vice-Chair:** I believe we left off with the procedure of members to speak in general, and the first one who indicated he wished to speak was Mr Morin.

**Mr Morin:** Yes, Mr Chairman, and I have a statement and I'd like to distribute it so that you can read it with me and hopefully retain 50% or 60% of it. The average is normally 10%. If you retain 10%, you retain a lot.

**Mr Villeneuve:** Mr Deputy Speaker, only you could get 100%.

**Mr Morin:** If you don't have enough copies, I have another one here.

I think it saves a lot of discussions. The purpose of it, of course, is to stir further discussions, because I think it's a very important topic and something has to be done.

We're here today to determine the role and function of the independent member of Parliament. There have been independent members in the past, but in the last few decades, most elected members of Parliament have been affiliated with a political party. The present standing orders of the Legislative Assembly of Ontario acknowledge only members from recognized parties. Independent members do not enjoy any specific rights. In this respect, House rules vary from one province to another. Some are drafted from the perspective of the member; others do not distinguish between independent members and those belonging to a political party; yet other rules place some limits upon the independent member's prerogatives.

What is clear from these different approaches is that most provincial legislatures and the House of Commons in Ottawa have made some provisions to accommodate independent politicians. This is only right, because whether one is affiliated with a party or not, one is elected on behalf of a riding and is thus entrusted with the mandate to represent its constituents. This is a key point that we must consider when determining the role and functions of independent members.

What status do we wish to give independent members? Are all members to be considered equal, irrespective of party affiliation or absence thereof? If the pre-eminence of parties is to be favoured, then it has to be explained. We will have to justify the limits we are placing upon independent members' roles.

This situation forces us, in essence, to define representative democracy in Ontario. Do we, or does this committee, have the right to prevent members from exercising their legitimately acquired mandate of popular representation simply because they are not, or no longer, affiliated with any political party? Quite frankly, I don't think so. Any move in this direction can

only diminish the principles which uphold our system of government and would be neither representative nor democratic. For this reason, our chief concern should be to enhance the democratic process to ensure the effective representation of all Ontarians through their elected member of Parliament.

As everyone here is aware, the level of dissatisfaction of the Canadian population has reached unprecedented levels. Whether or not it is deserved is a different matter. The point is that today many persons believe that government is out of touch with reality. They feel that they have no say in how they are governed, and in light of this, undue restriction of the parliamentary means by which independent members represent constituents will definitely not send out a positive message.

Clearly, then, this matter is one of fairness, but not toward the elected independent member as much as toward the electorate. Constituents are entitled to the proper representation and defence of their interests. Representative democracy is based upon that premise. To deny them, through their elected representative, participation in the legislative process is to deny them a fundamental democratic right.

We might want to put ourselves in the shoes of an independent member and try to see how we could represent our constituents with the limited means presently available. How would we wish to be treated? Would we not be frustrated by the silence and inaction that is imposed upon us?

As you can gather from the thrust of my speech, I do not support the status quo. This committee must find a way to include independent members in the legislative process. We are dealing here with the principle of fair and equal representation. To allow political considerations to rule is simply unacceptable.

This is why I would recommend that any changes regarding the role of independent members be set out clearly in the standing orders so as to avoid any misunderstandings. It is preferable that the exercise of members' prerogatives not be left to the consideration or goodwill of any party, be it the Speaker or the House leaders. I am not suggesting that these individuals would be unfair or unwilling in any way to protect the rights of independent members, but politics, as we all know, tend to get in the way. It would, therefore, be better to set out the new rules clearly in a language that is not subject to interpretation, as much as this is possible.

I would like to clarify the following point, as it has been raised a number of times. In my view, it should not make a difference whether a person was elected as an independent or became independent during the course of the session. A variety of reasons may prompt a member to declare himself or herself independent. Regardless of these, however, that person is still the elected representative of a riding, and as such, requires

the tools necessary to carry out his or her mandate. Any one of us could, through some twist of fate, become independent. Let's treat those who are presently in this position as we would like to be treated.

Another point has also been raised which should not be dismissed: how to justify the fact that independent members get guaranteed time in the House for statements and questions while others do not. I want to start by stressing that the object of this exercise is not to create inequities among individual members. All members should enjoy the opportunity to make statements and ask questions in the House, especially when their riding or their constituents are affected by a particular issue. Members must have a say on behalf of their constituency.

1420

Rev Drainville made an interesting remark about the point. He noted correctly that the allocation of question time is a party decision. As we all know, questions are often asked by the same persons. Perhaps individual members would be less frustrated if there was more fairness within their own caucus. Independent members might not then be perceived as enjoying unfair privileges.

I have prepared a list of proposals that this committee may wish to consider.

Proposal 1: that independent members be entitled to the following support: indemnities, allowances and benefits, private accommodation, access to legislative services and other such means that allow them to fulfil their duties as an elected representative.

I realize that this is not a problem at the moment and that independent members do share these privileges, but it should be included in the rules if this is not already the case.

Proposal 2: that each independent member has the right to make a statement and to ask a question and supplementary of a minister once every four weeks.

I think we've calculated this a minute ago: 130 members, you divide this by four—38, so 38 questions and you'd come to about once a month, every four weeks.

As the average backbencher apparently speaks in the House once every three or four weeks, this proposal does not grant independent members any privileges that backbenchers do not currently enjoy. Again, it is up to party leaders to ensure equal opportunities for speaking in the House to their members. I don't believe that independents should be given a collective right to make a statement and ask questions.

This matter raises the issue of time allocation in the House, as question period takes place within 60 minutes. Must we allow extra time to compensate? Perhaps we could consider limiting the time allocated to questions and responses in order to try to fit extra questions

in a 60-minute time frame. This would force questions to be brief, concise and direct. It might help to diminish the level of acrimony which characterizes current House proceedings. If this is not acceptable, then increasing question period to, for example, 70 minutes may be better.

Proposal 3: that independent members have the right to raise matters of privilege or points of order.

I believe that independents can exercise this right, but again, it should be specified in the House rules.

Proposal 4: that independent members have the right to vote in the House and to withhold unanimous consent, contrary to what my colleague Norm Sterling mentioned this morning. But again, it's for us to debate it, to decide how we should make it.

It goes without saying that independent members should be allowed to vote in the House on any matter. They are acting on behalf of their riding. To deny them this right is to deny a voice to their constituents. This is anti-democratic and offensive.

Some of you may object to granting independent members the right to withhold unanimous consent, yet this is a right that all members enjoy, even though they may not exercise it for a number of reasons. But as we all know, it tends to be invoked for political if not petty purposes. There is no reason to assume that it will be misused by independents.

Proposal 5: that independent members have the right to introduce private members' bills, to debate these and to vote during private members' time.

Since the order of private members' bill is decided by a ballot system, and since one's possession is thus determined by chance, the process can be deemed fair and objective. It does not give independents any special status. Giving independents the right to speak on a private members' bill does not mean that they will do so continuously or take much time away from other members. They should be given a portion of the time allocated to parties in this case. This may entail reducing each party's time or adding a few minutes to the debate. No party would be disadvantaged by this measure. As for the right to vote, it does not take anything away from other members. There is no reason why they should not vote.

Proposal 6: that independent members have the right to speak out on government bills.

Again, independents may be given a portion of the time allocated to parties. As I mentioned earlier, no party need be disadvantaged by this measure.

Proposal 7: that independent members have a right to sit on a committee, to vote, to receive documents, to ask questions of witnesses, to stand for election as Chair and to be part of the quorum.

Committees play an important role in the legislative process. In the absence of a Senate, they act, to a



certain extent, as our second chamber by considering legislation at greater length, in greater detail. They do a great deal of work that cannot be accomplished in the House, such as receiving expert witnesses and so on. Ideally, they should be devoid of partisanship. In reality, this is not the case. Nevertheless, the presence of an independent member on a committee, with full privileges, does not take anything away from other committee members. If it unbalances the committee in any way, as membership is allocated according to party standings, then an extra member can always be named to guarantee the government side's majority.

I realize that these proposals may appear quite generous to some of you, and not acceptable for that reason. However, I think that they are necessary, for they enhance the representativeness of our democratic system. These reforms guarantee that the voice of all constituents is heard and that each elected member participates fully in the legislative process.

If one can seriously justify, for non-political or non-partisan reasons, why independent members should not enjoy the abovementioned rights, then limits may be placed upon the prerogatives of these members. In my view, however, any undue limits will serve only to undermine the principles which uphold democracy in Ontario.

I think the province of Ontario, ourselves here, we're given a chance, we're given the opportunity to come up with something which I think would be fair, which would be democratic and which would enhance also the image and the opinion of what the House really is. The public is waiting for us, to know exactly what we plan to do. Don't forget, someday you yourself may become independent. How would you like to be treated? Let's make sure that we treat our colleagues—they're our colleagues—the same way as we treat each other.

**Mr Winninger:** I certainly have to commend you for putting this all down on paper so concisely and framing a lot of the issues we were struggling to come to grips with earlier this morning. I don't disagree with some of the points you made which might, in the end, expand the role of the independent member, but certainly on one of the points—and I'll study your other suggestions a little more closely—I wish to play devil's advocate with you for a moment, and that's the suggestion that an independent member, however he or she became independent, could withhold unanimous consent.

I feel it is a very dangerous precedent to set, that one member could, for whatever reason or motive, hijack the proceedings of the House without being accountable to a party, and furthermore, in the case of a member who became independent following his or her election, without accountability to the electorate. I appreciate your point that it's their democratic right to represent their constituencies, but here, if we're dealing in the case as Mr Villeneuve mentioned, where a member has

left his or her party and become independent, hasn't decided to resign and run in a by-election as an independent, where is the real accountability?

1430

For example, a member could run on a particular platform that reflects a party ideology, then for reasons of his or her own decide to defect from the party and become an independent. That very platform of his or her party that likely got that candidate elected could then be placed entirely in jeopardy because that individual chooses to withhold unanimous consent. I don't care what the issue is. That particular member, having left his or her own party, could hijack the House and perhaps take a position that's entirely contrary to what the majority of the electorate voted that person into office to do. I think there's a clear danger in that and I raise that with you at this point as a devil's advocate.

**Mr Morin:** My approach and my feeling on that issue is that I treat everybody equally and I respect the opinion and the intelligence of everyone. I know for a fact that an independent member we had used that issue as sort of a—he didn't use it as a threat, but he knew that he had the power to do it, that he could vote against anything. But that individual was a decent person, in my opinion, and did not use that prerogative. It could have created havoc. I know there are reasons to be concerned that someone could be elected and then use that power to stall everything. Norm touched on it very lightly this morning, making a proposal to the effect that perhaps you may need three or four unanimous votes in order to accept it. That is an approach, if we have any doubts, that could certainly be used. I don't know; it would have to be, if there are three parties in the House, that unanimous consent has not been granted by one from each party. There could be a rule that could be established. I know that it could create some problems, but this is the reason I brought it, to make you discuss it, to come out with some ideas so that we can respond to the need. Where is my friend?

**Ms Akande:** I am afraid he is not here. I will be sure to convey it.

I too am very impressed with the fact that you've been able to put this down as concisely as you have and capture a point of view that I very much respect, and that is the point of view of the electorate. As I spoke briefly this morning, it was to say that we have to be aware of the fact that the electorate today has a view of the goings-on in this House which may in fact cause us all to look again at their affiliations to parties.

I recognize the point that Mr Villeneuve made this morning, the distinction between an independent member so elected and a member who has decided to leave his or her party, and I also was listening to your response. I think we have to emphasize the electorate in this more than the party member because, while you are talking about a situation where a member may have

been elected because of the policies held by a particular party, we must also be aware of the fact that governments' and parties' policies do change during a term of office, and the actual—

**Mr Villeneuve:** We all agree.

**Ms Akande:** Let me be diplomatic here. The actual relationship that some of the constituents had with particular policies may in themselves cause the member to become independent. I think you have to focus, as I think is done well in this paper, on the electorate and our responsibility to it.

I might say that, though this is here to promote discussion, and I certainly recognize this is what we're going to have, I would be very careful, personally, about positioning myself in a way that tended to undermine the rights, and the democratic rights, of the individuals out there in the constituencies, because they in fact are not happy with what they see.

**Mr Villeneuve:** To my colleague, with whom I have the privilege of sharing the Speaker's chair from time to time, congratulations and thank you on a well-thought-out presentation.

Proposal 1: I have no problem with it at all. I think that is already in place.

Proposal 2: I would not like to see a specified four-week period. If I were an independent and a matter affecting my constituents were very much at the forefront, I think the Speaker should have the ability and the power to decide on the importance of the matter. If I make a mistake when I'm questioning and I know I'm going to have to wait a month to follow up, the potatoes get pretty cold. It's a matter of, some degree of flexibility upon the Speaker and the, Speaker would know. Let's go back to a situation at hand that we've experienced, the casino gambling issue where, without being a one-issue thing, it was one member's prime reason for doing what he did. I think he should be allowed maybe a little more than one question every 30 days. He may well not have any questions for 60 days on issues that are not nearly as important.

Proposal 3: I have no problem at all.

Proposal 4 I have a major problem with, because any independent member who chooses to leave the party to which he or she was elected may well have an axe to grind. I think the words "unanimous consent" will now be a misnomer. I think we will have to call it "legislative consensus," which may mean two or three people can object and yet we have legislative consensus. "Unanimous consent," and I am no connoisseur of the English language, says that everyone's happy. Everyone will not be happy and will be allowed to express their unhappiness and we will still have legislative consensus, which may be a better choice of words. I cannot accept that one individual can hijack the House. That individual may well have his or her personal reason; I do not

think we can stop the process because of an unhappy individual.

The rest of my colleague's presentation I have no great problem with. The one thing I must caution the committee about is that we cannot make an independent member more high-profile, more important than backbench party members, be they with the government or with opposition. We have to be careful of that.

**Mr Randy R. Hope (Chatham-Kent):** I'm sorry. I don't agree with a lot of the stuff that's here. There are two phases, ever since TV cameras came into the Legislature. Let me tell you it's the greatest soap opera I've ever seen being performed, and I'm saying that as a member who is newly elected, came in here in 1990.

When I see question period, I think it's theatrics. You want to talk about the member representing his or her community? It's not done through question period. I agree with allowing him participation in the debate of a piece of legislation, but through the question period process I believe is nothing but a soap opera, and I'm speaking very seriously here.

I know that what some people are trying to do is raise the profile of it, but I'm looking at it in the real terms, and the real terms are about the voting process. I think it's important to reflect your community. I believe in debating pieces of legislation as a part of that process.

As far as asking questions in the House is concerned, I find that's the most theatrical part of the legislative process today, ever since we put TV cameras in there, because everybody wants to get their name well known and see who can get the headlines in the paper. Right after question period the reporters leave, and away they go.

1440

If you want to be very clear about the role of an independent member representing his community, then that individual should run as an independent member, not as somebody opting out from a political process, because all the caucuses have their processes which they go through, whether to endorse something or reject something.

But when I'm sitting here and listening to some of the comments that have been made—and granted, they are well put together—just looking at the private members' time, allowing an independent member the opportunity to participate and speak at private members' time, you're gracious enough to put that in as far as questioning of ministers is concerned, but there is nothing about the governance of private members' time. There's many a time I would like to speak at private member's time; because of its restrictive hours I'm not able to do so. Mr Villeneuve pointed out that we don't want to give that independent member more opportunity than those who sit with a political party or one of the



organizations that happen to be in the House.

I respect what you've done to try to allow the independent member a role and responsibility in the committee. I would not agree with increasing the numbers on committees. If anything, I think they should be decreased, in the committee work atmosphere. But to allow them participation on pieces of legislation, to debate and speak on something that might be important to their community, I believe that opportunity should be there.

I'm looking at this, and I'm not using this as part of a ploy. That's why I say we have to have serious debate on this, making progressive changes in this. If you're saying to me that we would give these rights to individuals, the opportunity to ask questions of ministers that you pose in question period, I would say that would be most appropriate for those individuals who run as independent members and are elected as independent members with no political ties. But somebody who leaves one of the designated parties and moves from a designated party to being an independent because he didn't get his way in the caucus process or whatever process, whatever might have happened during that process, giving him the opportunity to have more rights than I as backbencher I have serious problems with.

I've aligned myself with a political party. I support my political party, but no way am I going to let somebody in that Legislature have more rights than what I would have.

**Mr Murphy:** If I can just ask you a question of clarification, what do you see is the difference, in terms of question period, between an independent member who runs and is elected as an independent and someone who discontinues being a member of a political party after being elected? What's the difference that's relevant to question period that's not relevant in other areas of exercising a private member's rights?

**Mr Hope:** You're asking the question. What I see as the difference is that the clear direction of the individual has been laid before the electorate who have elected that individual. There is no political affiliation whatsoever. The individual has chosen to run on his individual beliefs and to run and reflect his community. He has done that democratically through the process.

When you are aligned to a political party and you get elected and you come to this Legislature and, for some reason, whatever it might be, you have chosen to leave that political affiliation, you have not clearly laid your intentions to the electorate. If you were to say we'd call a by-election and have a by-election in the process, then it becomes different. Then you have been re-elected as an independent.

**Mr Murphy:** Are you saying that distinction should apply across all of the suggestions?

**Mr Hope:** I'm only making comment on some areas.

I'm saying that in some of those areas we have to clearly define the rights of an individual, an independent member who has been democratically elected as an independent. Those who have left their allegiance to a political party would have to have another set of rules.

**Mr Sola:** I would like to get back to Mr Morin's statement. I think we have to keep in mind two reasons that he has stated for giving independent members more say.

It says on page 3: "For this reason, our chief concern should be to enhance the democratic process." I think we should keep that in mind. Then on page 4, he says: "Clearly then, this matter is one of fairness, but not towards the elected independent member as much as towards the electorate." I think we should never let the electorate out of our minds.

As far as democracy is concerned, it is the rule of the majority; it is not the tyranny of the minority. Therefore, in giving additional rights to independent members, we will have to balance them with responsibility so that they don't abuse those rights. But if our objective is to enhance the rights of independent members to the point that they can be more effective in the job of representing the concerns of the citizens in their ridings, then we must change our rules. Right now, that is not quite possible for an independent to the same extent as even backbenchers, whether it's government or opposition.

At the same time, we must not allow them to become one-person filibusters. Therefore there has to be some way, whether it's giving more discretion to the Speaker, or whatever, but when one person abuses the system, he or she should be able to be stopped by somebody.

To point out one thing, that does not prevent, under the present system, under the party system, one person hijacking the system. I have been party to that, being on the receiving end, and it's from one member of the present governing party.

As far as party members being elected on a party platform is concerned, in most cases that is true, but quite often the reverse is true as well. Quite often party members get elected despite the party they represent or the platform the party holds. I can serve as an example of both cases.

In my first election I won because David Peterson was very popular and it didn't matter who was wearing the colours of the Liberal Party. In 95 ridings of the province, a lot of unknowns as well as previous members were elected. In the next election, the one in which the present government took over, most of us who survived from the Liberal Party won despite the party. I think in the next election the governing party may feel the brunt of the disaffection of the electorate the same way.

We cannot say that an independent member, one who

became independent during the course of the term, does not represent his or her constituents, because if he or she survived a landslide or survived a backlash, there had to be a reason for it. We cannot just disregard independent members, for whatever reason, becoming independent during the course of a term, not serving either their voters or the views of their voters.

For instance, suppose, for whatever reason, somebody who represents a remote area of the province became an independent; for instance, Kenora, where Winnipeg is closer than most Ontario cities. Are we to assume that somebody who represents a riding in downtown Toronto, from whatever party, can represent that riding to the same extent that somebody who lives and breathes and knows what the constituents in that riding want, how they feel and how they are affected by legislation created here?

In my situation with Mississauga there are three other MPPs who can provide the coverage if I am muted, but for instance somebody from a remote area of the province where there is nobody within hundreds of miles, you are putting them in a very bad situation. We have to keep that in mind.

For that reason, I would support all of the points that Gilles has raised, but I would also like to add the proviso that as far as posing questions is concerned, there should be some flexibility, because something may arise in a remote area that is of urgent and extreme importance to that riding which has to be raised and which perhaps cannot be presented properly by somebody who is not proximate to the area.

1450

**Mr Sterling:** I think I put forward a couple of suggestions this morning. I find these arguments somewhat amusing—I guess amusing; I don't know whether amusing or almost odd—in terms of us trying to categorize members who choose to sit as independents, for whatever motives they chose or how they ran or whatever, because I think part of the argument we're forgetting is that a member basically has the opportunity to switch parties. If he switches parties, then all of those arguments you made about him running for one party and then going to another are lost because—

**Mr Hope:** Let's put a rule in that stops that too.

**Mr Sterling:** —he's left one party and gone to the other. I might even make the argument, quite frankly, Mr Hope, that I would venture to guess that most people to whom I would talk would say that, for instance one independent, Mr Drainville, more accurately reflects the party platform of the NDP than those who remain in the party. How do you argue that?

**Mr Hope:** Come on, Norm. Are you getting into individual cases, or are you going to speak about the role of a private member? If you want to get into theatrics, we can do that right in this committee.

**Mr Sterling:** It's not theatrics.

**Mr Hope:** It is so; it's clearly theatrics. If you want to talk about Tory policies and Liberal policies, I can do that too.

**The Vice-Chair:** Mr Hope, Mr Sterling has the floor. Would you like to be on the list?

**Mr Hope:** Certainly. Then I'll decide whether I want to speak after.

**Mr Sterling:** I think you have to keep the rules somewhat simple and there has to be a certain amount of discretion involved. I think Gilles is perhaps trying to spell out in too accurate terms, or whatever, what the participation of a member should or should not be, because a lot of that, I think, depends upon how that particular member represents his area, the personality of that representative, the issues of the day.

I don't think you can allow an independent member one question every four weeks or one piece of debate during a period of time. My preference would be to leave the Speaker to have some discretion, in a larger sense, in saying the independent member shall have the opportunity to ask questions, to represent his constituents, as equally as anybody else in the Legislature.

I think you can work out those kinds of words both in the question area and in other areas. For instance, I firmly believe that question period is a key part of representing my constituents. It probably is the most important part of representing my constituents. Let's face it: Politics is theatrics. If you don't understand that, I don't think you've observed the same things that I have.

**Mr Hope:** Then I'm not the old-fashioned politician, right?

**Mr Sterling:** A politician's job, in my view, is to get the issue relating to his constituents to the highest level of platform and public notoriety that he possibly can. He or she has to utilize whatever methods are available to him or her in order to get it there. That style of representation is extremely important to the people you represent. They want to know that their view is put forward.

I have debated a lot of things in the House and in committees and in question period, but I can tell you, it doesn't matter how logical or reasonable my argument might be on a particular subject; if no one's listening, if that's not reported, then my constituents' view has not in effect been put forward in an adequate way for them to grab the attention of the minister or the people who have the power to make those decisions. That's part of the game. Therefore, I think you have to allow an independent member all of those same tools, the same platforms that each of us has the opportunity to utilize as individual members within the party system.

I think the other thing you have to remember in this: I've heard a lot of parliamentarians under our system



talk about the role of the individual member, that we must enhance it, that there should be more free votes. We hear this in the Reform Party and we hear it across—this is a team sport. That's the way I always look at the British parliamentary system: It's a team sport. The fact of the matter is that the participation of individuals in that system to a very large degree depends upon the leadership of the party that you are associated with.

If Mike Harris chooses to use his members in a certain fashion and allows them certain kinds of platforms or power in making decisions, so be it. If Lyn McLeod, the Liberal leader, doesn't see it that way or sees another way of doing it, that's part of the system. Usually the Premier of the province, if he or she sees the necessity to keep very strict control, which is the normal way it has worked in the past—I'm not just talking about the present government; I'm talking about when we were in power and when the Liberals were in power and all the rest of it—that's part of the game.

I don't think you can ever get away from the fact that we are involved in a system which basically embodies the fact that it is a team kind of system. You can't ever hope to elevate an individual member to the same kind of freedom, the same kind of power, that they have for an individual member in the United States. You just can't. You can't have it both ways. You can't have the idea of a team and the tremendous power you give to the winning team and have the same individual power to the individual members.

I look at these suggestions and I think they're fine. I have very, very strong objection to number 4. As I mentioned this morning, I do not believe you can give the opportunity for an individual member as freely as we have in a system where there are more and more independent members.

We have never really addressed the issue of allowing an individual member to block unanimous consent. I don't think it would happen so often that there would be a problem, but I'll tell you where I think the greatest problem would arise in this whole issue. That would be where unanimous consent was required to extend a session or whatever. Someone is not up to date on what's happening because he or she is independent, and at 6 o'clock on a Thursday evening, instead of extending it to Friday, because of that person's schedule on Friday, he says, "No, I'm not going to allow this thing to go over for an extra day. I'm going to call everybody back on Monday or Tuesday of next week," or prolong the session, whatever it is, instead of there being some kind of responsibility by that individual to some of his other team players.

If you or I sit in the Legislature and we say, "Gee, I don't care whether we come back next Monday or Tuesday or whatever instead of sitting late tonight, Thursday evening, to wrap this thing up," or wrap the

session up, or whatever—there's a lot of coercion and a lot of discussion that takes place near the end of every session in this place. I've experienced it for 15 or 16 years. There's a lot of debate within your own caucuses as to whether you want to stay on or you don't want to stay on or whether it's worth staying on, and all the rest of it. Usually, you come to a pretty reasonable conclusion and the three House leaders usually come to a pretty reasonable conclusion in wrapping this thing up and going home at a reasonable time. There's usually a debate as to how much business is going to take place before the end of the session, and that's usually negotiated out by our House leaders. I really have a bit of a concern on that end of it, on the unanimous consent.

#### 1500

I have to tell you, the Elijah Harper thing makes me very, very nervous. I don't believe Elijah Harper or any individual member of any legislature has the right to cut me off on my vote, in terms of a constitutional resolution dealing with the change of our Constitution, on the basis of a technical rule in that area. I think that was very harmful to it. If I were Elijah Harper and I was sitting there, I might have used that if I felt as strongly as he did about that particular issue, but I don't think it was right for the system that he was able to do that. I really don't believe that it was right that he, as an individual member, could cut it off like he did.

I think with three or four changes which basically give the right of an individual member to be involved in question period, to have a statement, to be involved in debate on bills, to be involved in the private members' draw, perhaps for him or her to make an occasional request to be involved in debate on a private member's bill—we could amend our rules to allow perhaps a five-minute intervention or something of that sort for an independent member at the discretion of the Speaker. I think a Speaker would be pretty careful that he wasn't allowing an independent member to be involved in the debate at excessive times, and that kind of thing.

I think one of the things you have to take into account is that because independent members don't have a party to speak for them, in essence they are a little bit like an opposition member; they have to be more involved in putting forward their position. Because there are less of them, they are less forceful. Government backbenchers have the luxury, if they want to call it that, of having the government put forward their position, so that if you are a member of a government, the public pretty generally knows where you stand on an issue. Once you find yourself transferred into the opposition benches, then it's less clear because the press and the media don't put the opposition parties on the front page. They don't tell you where people stand on a particular issue.

As an independent member, I would imagine it would

be even more difficult to get out to the public you represent where your position in fact might be. Notwithstanding what Noble is saying in terms of not enhancing the position of an independent member, I don't think you really have to worry about enhancing the role of an independent member. I think an independent member has a terrible cross to bear in terms of having to formulate a position on basically all of the issues that his constituency asks him about.

You and I, who are members of parties, have a huge crutch to lean on. All we have to do is say, "Well, what's the party line on this?" and therefore you can answer your constituents and say, "My party is this way," or, "My party is that way," even if you're not that way or you don't agree with the party position. But it is a huge crutch to rely on and, quite frankly—

**Mr Murphy:** Sometimes a thin crutch.

**Mr Sterling:** Yes, it's sometimes a thin crutch. But it also gives you an opportunity to hide when you don't want to express exactly where you are. As an independent member, number one, you don't have those resources to ask somebody, "Where do we stand on this?" or, "Where do we stand on that?" If somebody asks you a difficult question on a complex issue, you might not have any interest or any knowledge about that issue, but in answering your constituent, when you have a good research department, which my party has and I presume other parties have, you can go to them and ask them, "Where do we stand on this?" or, "Give me a position on it," and that kind of thing.

I think the idea that you're concerned that you're going to enhance the role of these independent members to such a degree that they are going to be threatening to the other three parties is illusory and I don't think it will in fact happen.

In summary, I'd just like to say I would like to in some ways modify the rules but leave very, very much of the meting out not in hard, defined terms like "once every four weeks" or whatever, but leave that at the discretion of the Speaker, with some kind of general understanding that the Speaker would allow participation as either a normal member of the opposition or a member of the Legislature who is not a cabinet minister. I'd rather leave it that way than say it's this amount or that amount or once a week or twice a week or whatever it is. The system just doesn't work that way. Sometimes a member has to ask, and should be able to ask, three questions in a week, whether he's an independent or he's not an independent, but he may not have another question for another three, four or five months.

**Mr Murphy:** I just want to follow up on John's comments. I guess there's a third category of person elected, which is a person who is elected in spite of himself. Some would say that I fit into that category.

I do want to say that I agree with Norm that it's

important to put it in a more general, discretionary way. What I've been hearing around the table is a sense that what we want to achieve is an equality of participation, that the independent member has a right to participate much to the same extent as any other member does in terms of their private member capacity.

You talked about the concept of it being a team sport, and I think in fact we really wear two hats here. To some degree we wear the hat of a member of a team and in other circumstances wear the hat of a member serving a constituency. I guess my view is that where the equality should come in is in those circumstances where you're wearing the hat of a representative of the constituency and not so much in the team sport aspect of this place. That may come more into play, for example, in things like responding as a party to government statements of policy and a few other instances. But there may be areas of discretion—where, for example, a member leaves a party for a particular policy concern—where it may be very appropriate for that person to respond to the government's announcement in that circumstance.

I guess you cannot, as a general rule, lay down rules that are going to provide for every circumstance. If you can't do that, then you should go in the other direction, which is to say that what we want to achieve for independent members is an equality of participation in representative matters related to their constituencies, an equality of participation, and leave that to the discretion of the Speaker.

You could give examples if you wanted. It may very well be that in matters of members' statements and questions, you could say so many a session; for example, three statements and two questions a session to be used as the member wishes, subject to being recognized by the Speaker. But then that's putting some particular detail. That's the kind of thing you can leave, really, to the Speaker. Maybe we can make a recommendation that because we think this is how often a private member participates, that's how often an independent member should participate.

1510

There are two particular circumstances that come up. One is the question of participation in a committee. I actually think that participation in committee is different than in the House, because in a real sort of way each of us here represents about 12 people. Your vote counts for a lot more in a sense in this setting because there's only 11 of us here plus the Chair, so an individual's participation as a committee member is much more significant than it would be in the House where you're one of 130. So I would have a problem, I think, with a general voting right floating free in committees for independent members. But I think they should have the right to move motions, to speak, to put the issue forward and then leave it to the opportunity for the debate and vote



in the committee. It may spread out, but I think that I do have a problem, because there is that sense of being larger than one person in a committee sense because you have other people you're trying to represent. The six government members represent their government caucus here.

The other issue is the unanimous consent issue. I guess at the end of the day I don't really have a problem with it staying as is in the sense that I understand the argument that says that members who are members of parties have that other rein on the exercise of their power that they have to vote to deny unanimous consent and an independent member doesn't, but I would think that if 129 people in the House are saying, "Yes, we should do this," and one person stands up and says no for an arbitrary or irrational reason, the discipline of media attention for that irrationality might be sufficient to make it otherwise.

Now, there may be some people who will deny unanimous consent because of an issue that comes up, and obviously the Elijah Harper example is one. I'd be a little concerned about painting too much into that, because if I remember correctly, and maybe I'm wrong, but as much as anything else, the opportunity to exercise that much power came because the Legislature in Manitoba timed itself so that unless they provided unanimous consent, they couldn't have the vote in time for the time imposed by the Meech Lake agreement. So it was partly because the Legislature did itself in, frankly. There are those who theorize that perhaps it was set up that way on purpose, but far be it from me to ascribe motives in that way.

I think there are ways to police unanimous consent. If it's abused, I think that would be a rare circumstance, and there are other ways of policing it. So I would just leave that rule as is.

I would recommend a general statement of principle that you want a quality of participation of independent members, and I do disagree with Mr Hope. I don't think, actually, it matters whether they leave a party or are elected as independents, because what you're trying to do is focus on their rights and responsibilities as private members representing a constituency. You're trying to make that part of it equal, and if you do that in a general sense and leave it to the discretion of the Speaker, that's probably sufficient.

**Mr Hope:** Say you don't agree with me. Then for those who choose to go independent, call a by-election and we'll see if you get elected back on your own merits of and how you're standing up for the principles of your riding. That's how you respond to that one.

**Mr Murphy:** That's a separate issue.

**Mr Hope:** No, it isn't.

When I was listening to the remarks by Mr Morin, for whom I have the greatest respect, he brought it out

quite clearly, which I've been hearing quite frequently from my own constituents, that they're tired of politicians. They want us to get down and start doing some constructive work. That's why I made the comments about question period. I have people who comment all the time. Those who have the opportunity to watch the Legislature say it's one of the best soap operas they've ever seen in their entire lives, that it's more theatrics and your next profession would be in acting.

Where I believe that a member does have a positive role in participating and representing their community or their constituents is through the legislative process, because that's what the Legislature is all about. It's dealing with legislation, changes that will affect their community, their constituents, and I believe through that process—I'm not totally harsh to what you're saying. Allowing an individual the opportunity of a question once every four weeks sounds legitimate.

I find it very interesting to listen to Mr Sterling and Mr Murphy just now. I guess I have to get a copy of Instant Hansard, because I thought this morning during the conversation they were talking about clear roles and guidelines, and this afternoon they're talking about vagueness. I guess I have to get a copy of Instant Hansard whenever possible, because I would like to interpret both the comments that were made this morning and the comments that are made this afternoon about the legislation in itself.

Mr Morin, you have done an excellent job in this part, but what I'm trying to do is really constructively deal with the issue about politicians playing their strong political roles now and representing their constituents. I believe that is through the legislative process.

I separate the time we debate legislation, when everybody turns the TV off, from the actual time of question period and all the statements and all that. I separate those two parts of the legislative process.

During the legislative process, when we deal with actual pieces of legislation and debate legislation, I believe that is the opportunity for an individual to put before the rest of the 130 members who are in the Legislature their community's concerns about a piece of legislation and the impacts it might have or pluses it might have. Not only is it of the negative fashion, but it's also of the positive.

I believe through that process, allowing an independent member that opportunity to fully participate, as everyone else does have the opportunity—yes, if my caucus says, "Look, we want to keep the speakers down so we can get through this a little quicker," that's understandable; we have more people on our side. If you let all 130 talk on a piece of legislation, it'd take for ever. But I do believe in allowing that independent member the opportunity to express his viewpoint on the act itself, the legislation we're dealing with.

In terms of the roles and responsibilities in a committee, I guess that is one structure that is being talked about on a frequent basis; What are our roles and actual responsibility during the committee process? I have my own opinions about what I feel the committees are, and I believe that they have to probably be downsized more than increased. I only share that. I haven't given it much detail, because most people would probably prefer to be in their riding versus sitting around in a lot of these committees listening to presentations unless their community is directly affected. If there is a community representative speaking on behalf of my community before a committee, I always make the important point to being there to listen to the presentation that is being made before a legislative body.

But when we get into the whole issue about the actual roles of a member, your first part I guess is already covered under the financial part of it, the compensation aspect.

I guess the role is the allowing of a statement. I feel you've become very lenient with your proposal allowing them to question ministers, your time allocation. I have no problem with that; it's something I can live with. But to start expanding more and more the roles and their opportunities for independents—and that's where I separated the two. If you run as an independent and get elected, then you are truly there representing your riding.

I listened to some of the comments, "I got elected with David Peterson, and after, I didn't get elected with David Peterson." You got elected by a colour of association. That's how you get elected in most legislatures, and if anybody tells me any different, then I ask you to please step down now, call a by-election and see if your popularity gets you re-elected on your individual name in that riding, because you'll have a tough time.

**Mr Morin:** René Fontaine proved that.

**Mr Hope:** I'm not going to prove it, because I'm—

**Mr Morin:** No, René Fontaine, the former Liberal member, proved that argument. He proved that in a by-election. He went to run and the Conservatives did not bring in a candidate and he ran strictly on his name and he was elected.

**Mr Hope:** But that's what I'm saying. If somebody chooses to be an independent and thrive on extra privileges of representing his community, then withdraw; and I know what Conservative you're talking about. Drop your name out of it and then re-present yourself back to the public and see if they agree with the ideas you have, because if you stood as an independent on a policy or separate yourself from one of the organizations that are currently identified in this Legislature, you'll have a tough time telling me that you represent the majority of your community. That would be left up to the community itself to determine whether

you actually represent. In my own view, and maybe one day I'll eat these words, I'm saying if I ever chose to be independent, I would let my public decide.

**Mr Murphy:** Be careful.

**Mr Hope:** Listen, I have no problem. If I ever chose to leave this party, I would leave it up to the discretion of my own community to decide that. That's the way I've always believed. I've got elected by a political party. I never got elected as Randy Hope into this Legislature.

**Mr Sterling:** Those are the election laws. We're dealing with a separate—

**Mr Hope:** No, we're talking about actually representing your community; you're talking about the roles of an independent.

**Mr Sterling:** The election laws as they are now, which allow a person to change.

**Mr Hope:** No, no, you're talking about two different issues. You're talking about actually representing your community. You're talking about speaking on behalf of your constituents. Isn't that what you're talking about here?

**Mr Sterling:** We're talking about independent members.

**Mr Hope:** You're talking about cutting out the frivolous stuff, that I read in the opening remarks of the statement that was made by Mr Morin, to restore public trust back into the politicians.

I'm sitting here saying there are two distinctions between what we're trying to do here: There is the an individual who runs as an independent on his or her name and is elected to represent that community; also you have then the dissidents who wish to choose a different flow of the way they wish to express their viewpoints, for whatever reason it may be. When you sit here and you talk about the roles of individual members, I believe those who have chosen and are democratically elected should be given some special status in the Legislature, and those who have decided to leave a political party fall under a different category.

1520

I believe that there is some work we can do on Mr Morin's proposal. He has given a lot of thought to what he's done here. I'm not going to say I totally agree with what he's done, but I believe there is a lot of constructive thought here. As a member of a party, I'm concerned also about my rights.

I would love to speak more, and you did touch on the fact that the leaders and about a number of people always stand up in question period and a lot of other people don't get the opportunity to. I believe that's something that has to be addressed not in this forum but in the forums of the political parties.

**Mr McClelland:** I read Mr Morin's submission and



want to ask him a question. Mr Morin, I wonder if you had given some thought—I appreciate the thought you have put into this—with respect to your recommendation 7, how you would envisage members accessing committee membership.

Let me try and flesh that out somewhat. There are obviously a number of standing committees. I hesitate to speak in hypothetical terms, but perhaps to use it as illustrative of the problem, if we have a situation where, for argument's sake, there are five independent members and each of those women or men chose to sit on a series of committees, how would you, if it is the appropriate word, restrict their access to that committee, or do you propose that it would be by right? You use the word that they should have the right. Would the individual, in your mind, just simply advise the Chair, advise she or he that they had a desire to appear on a given day on a particular issue, or would you propose that they had a right just to sit and vote on an ongoing, open-ended basis, if you will? I'd appreciate any assistance you can give me in terms of your thoughts related to that.

**Mr Morin:** The purpose of my presentation, as I think I have stated at the beginning, was to stir discussions, and I think we're achieving that. That is the main thing, to have an open discussion. There are different points of view. What I presented is not the ideal solution, I know that, but the message I tried to convey is that if there is political will among ourselves, we'll be able to find a solution to accommodate these people who have decided all of a sudden to become independent.

We have no regulations at the moment, none whatsoever, and I'm positive that we can accommodate these people. We can accommodate them in such a way that we will respect, first, the people he or she represents and, secondly, also to be able to voice those opinions that these people pass on to him. That is the main thing.

How do you elect these people on committee? I don't know the rule. I don't know the solution. But at least I know that if there is political will among ourselves, among the parties—because this should be looked upon as a non-party issue. It could happen to you, it could happen to me, and how would you treat me?

The traumatic experience of that individual to decide to leave his party must be horrible, must be horrendous. You were elected yesterday for a team you believed in and then you decide to leave them. It's a divorce. It's a separation. It's a denying of all the ideals that you had, and you leave that group behind, and you know that. It's like in a family, and if you decide in a large family to go against the will and the spirit of your family, you're rejected. In French we say *mouton noir*, you're the black lamb. They don't want to see you any more.

*Interjection.*

**Mr Morin:** I'm sorry. I apologize. You make the smile so I know that you understand. I'm sorry.

You're rejected. You're not looked upon as part of a team.

This is the reason I think we must be able to show some compassion for that individual. We must be able to help that individual to continue to fulfil his or her responsibilities in such a way without denying the rights of the others. That is important to me. This is why I prepared this.

How do we arrive at a decision, a formula? Let's talk about it. I think we can do that.

**Mr McClelland:** Just by way of follow-up, I notice in the brief prepared by Mr Sibenik, on page 4 of your attachment you make reference to Quebec. I wonder if you could provide us or provide me—I presume my colleagues on the committee might want it—some more detail or some assistance in amplifying the second bullet point under Quebec's proceedings whereby the standing orders provide a mechanism; as you set out here, independent members are taken into account in the establishing of the membership of committees and the rules for participation. If there was something that you might be able to add to that, or is there some detail you could subsequently provide, perhaps a copy of the standing orders or the sections that make reference to that, I'd appreciate receiving that.

**Mr Sibenik:** I can get you a copy of the standing orders if you give me a few minutes to get them.

**Mr McClelland:** No rush; perhaps tomorrow or sometime at your leisure. I would just like to review it and reflect upon it. I might add that the one issue I have of concern is simply, if any proposals were forthcoming, how one would put handles on it, if you will. I like the spirit; I understand where Mr Morin's coming from. I see some difficulty in arriving at some accommodation and dealing with it in a concrete fashion.

Thank you, Mr Chairman, and Peter, thank you for the work you've done on this.

**Mr Hope:** On a point of order, Mr Chairman: Just to Peter, it says here without the right to vote. That's currently the rules that we have: Anybody can participate in a committee without a right to vote. If anybody has more and he raised a good point—to give us more in-depth process is on page 3 with the House of Commons. It says, "serve on standing committees" and "if chosen as a member of the committee, stand for election as Chairman, be part of a quorum" process. That would probably give us more detail than the Quebec model, which doesn't give the right to vote.

**Mr McClelland:** Maybe we should look at both. I would still like to see the Quebec one, and I presume Mr Hope wants to see the Ottawa one.

**The Vice-Chair:** Yes. I'll take that as a direction to see both.

**Mr Winninger:** I think essentially Mr Murphy addressed a point that I was going to make at the time concerning Elijah Harper. My recollection of the events was that there were certain standing orders, if you will, in the Legislature of Manitoba, and Mr Harper was simply enforcing and complying with those terms rather than the abbreviated and expedited terms that the Meech Lake process was calling for, so I don't think we could criticize Mr Harper for complying with the House rules of the day. Certainly history has proven him to be a hero in the eyes of many Canadians.

**Mr Sterling:** Could I just make a comment? I'd just like to clarify. I hope you don't take what I've said as a criticism of what Harper did, but what I'm saying is that Harper took advantage of a unanimous consent issue in order to put forward what his position on that issue was. As I understand it, regardless of the shenanigans involved—because, as I say, if I was Harper, in the same position as him, I might have very well done the same thing as he did. But notwithstanding that, what he did was prevent the Legislature of Manitoba from voting on that issue. I have difficulty with taking that away from the other members.

1530

**Ms Akande:** I'm really glad to be a part of this committee that's discussing this issue. I must say that though Mr Morin has offered his suggestions as a point of discussion, I actually have to be frank with you: I see none to which I take exception.

I recognize that there's a tradition in this place, a tradition which is most upheld by those to whom it relates, and some of us are not enamoured with the tradition. But we do believe that if you always do what you've always done, you always get what you always got, and that's not necessarily what we want.

**Mrs Ellen MacKinnon (Lambton):** What a mouthful.

**Ms Akande:** Well, I'm sorry. My analogies are a little folksy, but then so am I at times; so it's a point I don't apologize for.

**Mr Murphy:** You were known as the folksy principal.

**Ms Akande:** Yes, that's right. Oh, oh, we're at it again.

I want to talk about some of the issues that have been raised. One is that we have a concern about making the actual possibilities of representation for the independent more effective than the members of a caucus. Isn't that an interesting way of monitoring caucuses and their proposed policies?

We've also talked about the responsibilities that have to be assumed by this individual in doing their own research and gathering their own data and collecting information that they might need to respond to issues that are brought to them by constituents. If in fact, in

spite of these responsibilities, or within those responsibilities, they manage to represent their constituents in a way that seems "more effective than others who are somehow regulated by a caucus point of view," I would commend them, not criticize them or feel that they had to be reduced in rights, because they've been able to do that. It speaks to us who are perhaps not independent to then say, well then, what is it that controls or limits or influences our points of view and our perspective and our response to constituents' needs in a way that limits our effectiveness?

We talked about downsizing committees and I certainly want to talk about that. I'm concerned about that because so much of government's business is done here. People really think that it all happens in the Legislature, and the former principal taught that for many years, as a former teacher. I want to go back and meet all those people and tell them that I lied, and that in fact the real work of government is done in the committees. I would consider it dangerous—I know that that's a very serious word to use, "dangerous"—to limit the size of the committees. It's usually done in a way that says: "The government members or the opposition members or the third party members are representing a point of view. How many of them does it take to represent a point of view?"

I find it very difficult nowadays to go into any constituency, and I have been in many, as guests of various people, to talk to a group of people where I could say that the point of view is so singular, so narrow, so well-identified by any political party that we'd be safe to say that the three, if we have three parties or whatever, points of view that are represented by those members are actually it. I think that, if anything, the discussion would be made much more realistic and much more representative if we included the views of some independent members whose views would be different from all three of those parties.

We have a tendency, too, in our language to talk about the independent member as perhaps being a rebel and to associate words like "arbitrary" and "irrational" and sometimes to use as examples the singular step that was taken by Elijah Harper; I know it was used in a general example. But the point I'm trying to make is that Elijah Harper's view, though he had to grandstand to take it, was really reflective of many constituents out there. That is why he is a hero, not because he did what he did but because he seized an opportunity to say what some of the political parties that were there were not saying and represent those of us, and I identify myself, who felt in concert with his feelings.

We talked too about the crutch of the party, which allows us perhaps not to be as well prepared as we individually should be because somebody else is willing to do our thinking for us. I wonder if we should be here if we are willing to allow somebody else to do our



thinking for us. I personally sometimes feel somewhat limited in being able to express some variation of the policies assumed by my colleagues, and yet I struggle on.

So we're talking about tradition versus change. We're talking about the independent member being seen as being more representative of particular points of view. We're talking about the kinds of power he might have in preventing unanimous consent. I tell you, I think that's only logical. If there are 130 members and one of them says, "Hey, I disagree," it is not unanimous. To say that it's otherwise and to find some kind of terminology that skirts around it is to deny the existence of that one member or the relevance of that one member to what we're discussing and so the input of his or her constituents.

Democracy is an important thing to me. It's one of the things that keeps me here and brings others to this place. Any time we can widen it, broaden it, any time we can champion a person who can stand there and say, "I'm going to represent my constituents to the best of my ability even if it means that I'm not in a political party," I would champion their rights and fight to extend them.

**Mrs MacKinnon:** I hesitate to speak after my colleague who finished, as she does it so eloquently. First of all, I'd like an explanation. In proposal 1, "indemnities," is that our paycheques?

**Mr Morin:** Anything that has to do with finance—your salaries, your pension plan, name it—should be there.

**Mrs MacKinnon:** All right. I don't have any problem with that. What's this about access to legislative services? Do the independents have that now or not?

**Mr Morin:** Sure. Yes, you can go to the library, you can go to a clerk, you can go to a researcher.

**The Vice-Chair:** I understand that every member has the same access to the legislative services.

**Mrs MacKinnon:** So nothing is being changed there? Not that I'm against change.

**The Vice-Chair:** No. I think Mr Morin's concept here was to put in the rules what in fact exists, the right of all members.

**Mr Morin:** So that they don't take it away.

1540

**Mrs MacKinnon:** I do have a problem with proposal 4. I realize what Ms Akande said, that when one dissents and everybody else consents, that's not a unanimous vote. It depends on how you interpret it, I guess. But I do have a problem with number 4, "to withhold unanimous consent." I refer it back to something that Mr Hope said. If a person is elected to come here as an independent, I think that perhaps he or she should be accorded and afforded the same privileges I get as a backbencher. But if somebody comes here

affiliated with a party and then chooses to sit independently because he or she cannot agree with the party's policy—of course, you've got two types of independents: You've got the independent who was elected to be an independent; you've got somebody who was elected to a party and then, perhaps for reasons that he or she had absolutely had no control over, had to become independent until other processes took place.

But I have a problem with somebody who becomes independent just because, to put in plain language like my mother would do, they can't get their own way. I have a problem with that type of person, with that individual becoming independent because he didn't get his own way on one particular issue and then he wants all the goods and services. I have a problem with that, I really do.

I suppose maybe there are those who are going to say, "Boy, she's not very democratic." I don't know whether that person was democratic in the first place or not, because in democracy we say the majority rules. If a party, no matter what colour the stripe, chooses to have a certain type of philosophy and is in the majority, then why would a member become an independent because everybody else voted for it?

Maybe I'm running around in circles and catching my tail as I come back, I don't know, but I see a whole bunch of problems here. If people get elected to represent any party, the constituents must have felt they wanted that person to represent the philosophy of that party; then they come here and they choose to sit independently because they didn't get their own way. I have a problem with them having that many privileges. However, persons who, as I said before, through no fault of their own, find that they must sit independently because of perhaps some law or rule or regulation, whatever it might be, then I think they should be accorded some rights and privileges. I'm not very eloquent, but I'm trying to put it in language that I understand, and that's farmer talk.

**The Vice-Chair:** I don't have any more speakers. I'm wondering if we should have some discussion, at this stage, of the next process. There have been some issues raised. Maybe we need some answers and some further exploration of some of the issues raised before we come back with any recommendations. For instance, there have been issues raised by the various members. Using Mr Morin's paper as a basis for discussion, which I think we can all agree is a good basis for discussion, what I might suggest to expedite matters is that we look at some of the aspects that may require further exploration of the proposals. Obviously proposal 1 is the existing situation.

I hope you don't mind my summing up here. It seems that in proposal 2, the issue is whether it should be an arbitrary aspect or should be discretionary. I think we need to take a look at that issue and have an issue for

discussion tomorrow, and perhaps the research officer can give us some further—

**Mr Sterling:** I think there are three levels you could reach on this: One would be to have a definitive role, as Mr Morin puts it in proposal 2; the second would be sort of an unfettered discretion on the part of the Speaker; and the third would be discretion with direction. There are three levels you could talk about.

**The Vice-Chair:** I appreciate that. If that's agreeable, I think that's a good approach. If we go to proposal 3, I don't think we've had anybody raise any concerns with that at the present time.

**Mr Murphy:** We've had legislators' consensus on number 3.

**The Vice-Chair:** Yes. Proposal 4: I think it would be useful for the committee to know the instances in which individual members can prevent the process of the House by withholding their unanimous consent. I think it would be useful to now have those set out individually, a list for us to look at. I think Mr Sterling raised a very interesting aspect: Maybe there are some of those instances that we ought to consider amendment on and see if it's all appropriate that all of these continue to have unanimous consent. I would suggest that would be one way of looking at it.

**Mr Sterling:** The one that is skipped in here and that I raised: Should we still have the rule of five members forcing a division—or is that not considered relevant to the independent members—in order to force a division in the House; in other words, to have a recorded vote in the Legislature? In a committee any member can just ask and it is done.

**Mrs MacKinnon:** When did it get changed from seven to five? I always thought it was seven. You've been here longer than I have, so I'm sure you know.

**Mr Sterling:** I don't know how long it's been five. I guess the question is, should the threshold be lower in order for the independent to be able to force a vote on his or her own, or should it be—

**The Vice-Chair:** Okay. I certainly would be agreeable to have that item on the list. Might I throw out a suggestion and take some prerogative here and suggest that we look at whether there is another way for a person to indicate that he wants his vote registered against, without having a division. There might be a way a person could indicate, by notice in writing or something, or require it to be put on the record that he had voted against an item if he wished to do that. I can see the problems with respect to—

**Mr Murphy:** Forcing a division.

**The Vice-Chair:** —forcing a division, so I think we should look at other alternatives. What I'm suggesting is just to look at other alternatives, and what I suggest is one of those other alternatives.

Okay. The next item, proposal 5: I don't think anyone

had any difficulty with that.

**Mr Murphy:** I think Mr Hope rightly raised the issue more of—and this may be a discretion issue again, but something we think about—the equality of participation of members in the debate being the issue because of the limited time to debate private members' bills. This may be one where you set out  $x$  number of times per session in a strict way, or you leave an unfettered discretion to the Speaker, or again, the discretion with guidelines.

**The Vice-Chair:** Yes. I think that's fair enough.

**Mr Sterling:** Peter, you might also want to put in that alternative, does that take away from the other debate of the other members or do you just add time on to private members?

**The Vice-Chair:** Any other suggestions? Mr Winner, did you want to add some suggestions here?

**Mr Winner:** No. My comment was more general in nature. Perhaps you want to go through the proposals first.

**The Vice-Chair:** Okay. We'll go through the proposals and then I'll ask. Then we go to proposal 6. I think there is general consensus on the principle of it, but I think that's going to require some fleshing out of details.

**Mr Sterling:** I think it's the same issue as the debate on the private member's bill, that is, whether the House is speeding along or if there is—

**Mr Murphy:** A time allocation motion or closure.

**Mr Sterling:** I'm not sure how you write the parameters into this one.

**The Vice-Chair:** It really has to be discretionary.

**Mr Sterling:** Again, I don't know whether you would allow or you should allow an independent member to speak on every bill. It's pretty hard to say no, I guess.

**Ms Akande:** They probably won't want to even when you come to them.

**Mr Sterling:** Yes, I think you're right.

**Interjection:** Maybe it should be on the more significant bills.

**Mr Sterling:** Yes, I think you're right.

**The Vice-Chair:** If we move now to proposal 7, this is obviously one of the more problematic aspects. Obviously, one of the issues is, should the individual member have the right to vote on the committee, and how do you determine criteria for selection to committee? There are a lot of issues that have to be dealt with in proposal 7.

1550

**Mr Sterling:** Not only voting but being allowed to move a motion, in number 7, is another issue as well in a committee. You see, right now I guess our standing



orders say if you're not a member of the committee, you can come in and talk but you can't vote, most importantly, but number two, you can't move a motion. What I was suggesting this morning was that you may want to say to an independent, "You can move a motion in a committee but you can't vote."

**The Vice-Chair:** Yes. I think we need a lot of discussion on this.

**Mr Sterling:** It's another option we can consider.

**The Vice-Chair:** I would assume that an independent member wouldn't have the option of jumping into committees day by day; it would have to be—

**Mr Sterling:** I agree. I think he should be required to pick one every year that he wants to attach himself to, and then if he wants to pop into another committee and speak on it, fine and dandy, but on the one committee he would presumably sit during the summer—

**The Vice-Chair:** The full right of participation except perhaps voting.

Okay. I think we've dealt with the proposals. There may be some additional items we want to consider, and I assume that's what you want to speak to, Mr Winner.

**Mr Winner:** I just wanted to speak to these proposals in a more general sense and then we'll analyse them further, I'm sure, tomorrow.

If I were a cynical person, I would conclude that there's never more interest in expanding the rights of independent members or backbenchers than when a party is in opposition.

**Mr Sterling:** Mr Chairman, before we get to the general, could we just add any more?

**The Vice-Chair:** Yes. Would anybody like to add any more issues?

**Mr Winner:** I'm sorry, I thought we were through with that analysis.

**Mr Sterling:** There were a couple of minor points in Peter's paper this morning. One was about the compendium and the background material on the statutory report, and I suggested that any member of the House be able to get those on request as a matter of right.

There were also other issues, about opposition day, about a confidence motion, about response to ministry statements, that were not addressed in Mr Morin's paper. Quite frankly, I don't believe those should be rights of an independent member and I'm quite willing to omit them, but I'm not sure that any other member wanted to raise them or didn't want to raise them.

**The Vice-Chair:** Perhaps we can leave those outstanding items to be dealt with tomorrow. We'll just add those to be disposed of on the agenda.

**Ms Akande:** Will they be added to the list?

**Mr Sterling:** I think they should be.

**The Vice-Chair:** That's what I said, to be added.

**Mr Sterling:** Are there any other points that anybody else would want to raise?

**The Vice-Chair:** If I might interrupt, there's a suggestion, if we could have unanimous consent. It's going to take Peter some time to do that, so if we could do a switch tomorrow and have security here at 10 am from the Sergeant at Arms, would that be agreeable?

**Mrs MacKinnon:** I agree, if they agree.

**The Vice-Chair:** Then we'll start at 2 in the afternoon tomorrow on the role of the independent member. It is obviously going to take some time.

**Mr Sterling:** Why don't we go back to this on Thursday and just do security tomorrow morning, and then it will give Peter all day tomorrow?

**The Vice-Chair:** If that's agreeable to members, I have no problem with that.

**Mr Morin:** The only difficulty, Mr Chairman, is that I cannot be here Thursday. But it doesn't mean that the discussions cannot continue; on the contrary.

**Mrs MacKinnon:** I have the same problem. I can't be here on Thursday either, but that doesn't need to stop discussions.

**The Vice-Chair:** What have we agreed to? The Sergeant at Arms in the morning anyway; I guess we've agreed to that.

**Mr Winner:** Since I can't be here Thursday, I'd love to hear back from Peter some time tomorrow, even if it's in the afternoon. He does not look unduly inconvenienced by that.

**The Vice-Chair:** At 10 o'clock we'll deal with the Sergeant at Arms and at 2 o'clock, if possible, we will resume with the role of the independent member. Is that fair enough, Peter?

**Mr Sibenik:** Yes. That's fine.

**The Vice-Chair:** By the way, we'll be in closed session tomorrow with the Sergeant at Arms.

**Mr Winner:** Okay. Just to pick up my train of thought again, I suppose this may seem a partisan position to the other parties, but I think it might be a position that would be articulated by any government of the day. Quite clearly, as I said, interest seems to be more developed in expanding the role of an independent member or backbencher when one is in opposition, but I hear people in the constituency who are very concerned that members should exercise a little more independence of thought and not always toe the party line on every issue.

I also know from this excerpt from the Canadian Parliamentary Guide that there have been many, many members over the years who didn't fit within the confines of the major parties. In fact, there were independent members in the past, and I'm not sure how they were dealt with by the government of the day.

I'll share with you what my concern is. I'm told, and I have no reason to dispute the fact, that in this particular government we seem to spend at least two and a half times as much time on debate of any particular bill as has been the case in past governments. No matter what the government of the day is, that government has to have an agenda and it has to be able to proceed with that agenda in a fairly timely and expeditious manner.

The thrust of expanding the rights of independent members and possibly backbenchers may indeed serve to increase the time that's taken to debate certain bills. This may in fact be a good thing, but it may make the process even more unwieldy. Instead of having, say, a dozen different parties each with its opportunity to debate the bill, parties that are perhaps more accountable than individuals, you could ultimately have half a dozen independent members each with rights that would be enshrined to debate bills, ask questions, participate in committees.

The net effect of this, unless you somehow diminish other people's rights in debating time, for example, is to prolong the time it takes to get legislation passed. Frequently, members of government give up their time to speak in order to get a bill through and give the opposition, which isn't in power, full latitude or as much time as can be made available to debate bills and put forward their points of view. That makes sense in a democracy. But I think we have to be very careful in weighing the effect, whatever the government of the day is, in augmenting the rights of independent members.

If I were in the position of an independent member, as Mr Morin pointed out earlier, I might be seeing this in a slightly different light, but as a government member—any member of the other party could be in government in the future; we don't know that; we can never foretell—governments need to be able to get their agendas proceeded with, as I said, in a timely and expeditious manner. If indeed the effect of these reforms would be to slow down that process even further and make it even more turgid than has been the case over the past few years in my humble experience here, then I think we need to know that, and if we're trading off the so-called democratic rights of members for timely and expeditious passage of bills, I want to know that too.

I don't know how easy it is for our legislative researcher to find out how independents were being dealt with in the dim, dark past or how small minorities were being dealt with—for example, in 1929, there was one member of the UFO, which I believe stands for United Farmers of Ontario—and how other such members perhaps more recently were dealt with, what privileges they were accorded by the Speaker and the government of the day. I don't know if it's possible to find this out, but while we're in the process of taking some rather bold strides forward in expanding these

rights, I think we need to be a little cautious about what the effect will be on what is now very scarce legislative time.

**1600**

**Mr Sterling:** I don't think looking back to 1929 will have any relevance to today at all. Quite frankly, what's happened over the last 20 years—and I've been here for 16 of those 20 years—has been a further refinement of the rules. It's a little like our constitutional process that we've gone through in the last 20 years in this country as well, that we've continued to define rights, privileges and jurisdictional areas. We've tried to define them to such a fine sense that we get ourselves into problems when the odd situation arises.

In the past, I would guess that if you go back into the 1960s or the 1970s, the Speaker had control. He basically wrote the rules on a day-to-day basis and ruled by precedents and carried on.

It's only since the 1970s when we started to invoke these ideas of the power of the parties and the rules and as politicians became a full-time occupation that these issues arose. You go back into the late 1960s and we sat for six weeks a year. Everybody used to come down here for six weeks, stay at the Royal York and everything would be done. That would be it. And because everybody was anxious to get back to their constituency and their real job, then sanity prevailed.

**Mr Winninger:** Can we recommend that?

**Mr Sterling:** Well, I'd certainly recommend it.

**Mrs MacKinnon:** Oh, but our population was only a tenth of what it is now.

**Mr Sterling:** But notwithstanding, I'm just saying that going back in history, I don't—I just say to Mr Winninger that what I have proposed and I believe what Mr Morin is proposing is not a great enhancement of the independent member's rights. It is pretty mild. It's not so much a debate that the government party is only involved in. It's always a debate between leaders and the parties, because that's the real breakdown.

There's no more interest in Mike Harris having stronger independent rights than there is Bob Rae having stronger independent rights, because control is always an issue that every party in here has to deal with. Therefore, while you have to worry more about a time frame and you cite an existing problem with this government, I suggest that is a bit of an anomaly in terms of the fact that we just can't accept what you're doing as being the problem.

**Mr Winninger:** You don't accept our right to govern. You're finally admitting that.

**Mr Sterling:** No, no, no, but I think it's such a radical departure from what government has been in this province before. Notwithstanding the rules or whatever rules you might have, I think you'd face the same problems. To independent members who always come



up to me and say, "We've got to have more rights as independent members," I say: "Look, take a look at the standing orders. Learn what they're about and, boy, there's lots of opportunity if you want to exhibit power. If you want to show you're powerful, there's lots of ways to do it. All you got to do is find the right platform at the right time and do it."

I don't think what we're proposing here is radical or whatever. Notwithstanding that, whatever we propose, we know what will happen. The House leaders are going to get together and negotiate this in the final sense, so if we are in fact giving over a huge amount of power to somebody else, it's the government House leaders who are going to agree to it, and the leaders aren't going to agree to it.

I think what we're coming up with is that we'll probably pretty well accept it. I know my party leader wants a tradeoff on this: He doesn't like the unanimous vote, the right of a single member to hold up a unani-

mous vote. You're probably right in sync with that, although I noticed another member of your party is not.

I guess that basically states where it is. I think you can get overplayed on these roles, that they are the only thing and the end-all. They aren't the end-all. The end-all is what is negotiated in the House between the House leaders as well.

**The Vice-Chair:** Shall we adjourn this meeting?

**Mr Hope:** Yes. I've absorbed too much information. I need time to filter it out.

**The Vice-Chair:** I must say the Chairman had great difficulty restraining himself in comment. Normally, sitting on the government—

*Interjections.*

**The Vice-Chair:** I hope you'll be patient with me with my interventions. I'll try to restrain them. Thank you very much.

The committee adjourned at 1606.







## CONTENTS

Tuesday 14 September 1993

<b>Role of the independent member</b> .....	M-27
Peter Sibenik, procedural research clerk, committees branch, Office of the Clerk	

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

**Chair / Président:** Hansen, Ron (Lincoln ND)

**\*Vice-Chair / Vice-Président:** Wessenger, Paul (Simcoe Centre ND)

Johnson, Paul R. (Prince Edward-Lennox-South Hastings/PrinceEdward-Lennox-Hastings-Sud ND)

Farnan, Mike (Cambridge ND)

**\*MacKinnon, Ellen (Lambton ND)**

Mathyssen, Irene (Middlesex ND)

**\*McClelland, Carman (Brampton North/-Nord L)**

**\*Morin, Gilles E. (Carleton East/-Est L)**

**\*Owens, Stephen (Scarborough Centre ND)**

**\*Sterling, Norman W. (Carleton PC)**

Sullivan, Barbara (Halton Centre L)

**\*Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)**

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Akande, Zanana L. (St Andrew-St Patrick ND) for Mr Farnan

Hope, Randy R. (Chatham-Kent ND) for Mr Hansen

Jamison, Norm (Norfolk ND) for Mr Paul Johnson

Murphy, Tim (St George-St David L) for Mrs Sullivan

Winninger, David (London South/-Sud ND) for Mrs Mathyssen

### **Also taking part / Autres participants et participantes:**

Sola, John (Mississauga East/-Est Ind)

**Clerk pro tem / Greffière par intérim:** Bryce, Donna



CAZON  
XC20  
-L20

Government  
Publications



M-6

M-6

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Intersession, 35th Parliament

## Assemblée législative de l'Ontario

Troisième intersession, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 15 September 1993

# Journal des débats (Hansard)

Mercredi 15 septembre 1993

## Standing committee on the Legislative Assembly

Role of the independent member

## Comité permanent de l'Assemblée législative

Le rôle du député indépendant



Chair: Ron Hansen  
Clerk: Lynn Mellor

Président : Ron Hansen  
Greffière : Lynn Mellor



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 15 September 1993

The committee met at 1410 in the Humber Room, Macdonald Block, Toronto.

## ROLE OF THE INDEPENDENT MEMBER

**The Vice-Chair (Mr Paul Wessenger):** I think I'll call the meeting to order now. There's a quorum present. We're to continue with the consideration of discussion on the role of the independent member. Legislative research has prepared some more information with respect to dealing with Mr Morin's proposals, and I'll now ask parliamentary research, Peter Sibenik, to outline this for the committee.

**Mr Peter Sibenik:** Thank you very much, Mr Chair. I should point out to members of the committee that what I have done in this four-page document and the attachments is that there is a list of the proposals that were in Mr Morin's paper from yesterday together with a list of other items for discussion that appeared in my particular memo which you also received yesterday, so they are a global list of perhaps the outstanding issues that the committee may want to consider.

You'll see that two of the items in this document are asterisked. Those two proposals appear to be not contentious so I just indicated them as that, although the other ones appear to require some continuing discussion.

Certain members asked me for some additional research, and I have undertaken that research. What I have done is inserted it in the appropriate area in the so-called agenda of issues, and I can go through that and highlight the research that I've done.

I guess the very first point that I can refer to is on the first page, Mr Morin's proposal number 4. There was some discussion of the issue of unanimous consent and what can or what should be done in that particular area.

I have referred to standing order 56.1 of the standing orders of the House of Commons in Ottawa. That particular provision is attached in one of the attachments to this particular agenda if you care to read it, but basically it says what I have said there. I've paraphrased it. If unanimous consent is denied with respect to a routine motion, what basically can happen is that a minister can request that the question on the motion be put, and if 25 or more members stand up in their places, then the motion is not carried. However, if less than 25 stand in their places, then the motion is deemed to have been carried. That only applies with respect to routine motions, and as I've indicated here, "routine motions" is a defined term. They go to some length to define "routine motions," as you can see from the particular standing order, but that is their provision. That is how they get around a situation that develops when unani-

mous consent is denied by one or more members of the House of Commons. I bring that to your attention.

**Mr Gilles E. Morin (Carleton East):** Could we ourselves establish a mechanism, for instance, to prevent that type of situation? You always start on the premise that the person you're going to deal with is going to be reasonable—I always try to start that way—but if that person is no longer reasonable, doesn't want to understand, wants to abuse his power, then there should be an outlet, sort of a way that we can say: "Okay. We've given you all the opportunity to change your mind. You don't want to do so, and we'll use the gun."

**Mr Sibenik:** That particular provision can be something that this committee can consider. It is possible to draft such a standing order as in Ottawa.

**Mr David Ramsay (Timiskaming):** A gun would be a little harsh, wouldn't it? Can't we start with some less—

**Mr Morin:** Use a sledgehammer, softly cushioned.

**The Vice-Chair:** Just a point of clarification, Peter: I thought we requested an indication of a list of items where unanimous consent was required. I know you say routine motions, but I thought we'd requested that list for the purpose of the committee so we'd have an indication of the items that would be involved in that. I think, for the purpose of looking at the question of unanimous consent, all of us would like to know what we're particularly referring to. If we're going to look at the question of following the example of the House of Commons, I think all members would like to know the details.

**Mr Randy R. Hope (Chatham-Kent):** It's in there, isn't it?

**Mr Sibenik:** No, there is no definition of items, of procedures that do require unanimous consent. In fact, I'm still working on that particular part of the researches, but I think members might know that it would apply to such things as a motion to divide the time equally among the parties at the outset of a particular debate; that kind of situation is when it would be required. There are other kinds of situations as well. As I've indicated, it's something that requires a little bit of thought as to the extent to which unanimous consent procedures are applicable. I'm not sure there is an exhaustive list that I could come up with, because situations do change from time to time and there is a need for some flexibility.

I can tell you that I do have some personal difficulty in coming up with lists of things, because in the book on parliamentary procedure that I'm currently working

on, we discuss from time to time that, "Oh, we need an exhaustive list of things that fall under a particular kind of motion." It does pose some difficulty because we realize that we can't really be comprehensive, indicating every single possible situation in which a procedure falls under a particular category.

I will be able to get a list of the major kinds of procedures that might require unanimous consent, but I do caution the committee that there is some difficulty in ensuring that it can be an exhaustive list.

**Mr John Sola (Mississauga East):** I seem to recall that the Speaker has on numerous occasions, and probably even the Deputy Speaker, cautioned members in the House that anything can be resolved with unanimous consent. Therefore, practically anything we do in the House would be added to that list.

Could we just get the definition of what "routine motion" means? I understand there's a definition in the standing orders of Ottawa; if we could get that definition, that might maybe supply the information that the Chair was asking for.

**Mr Sibenik:** We have that list in the Ottawa standing orders and, in addition, we also have our own standing order 35, which is not an exhaustive list and it's worded in a way that is very cautious. I'll just read what it says. Standing order 35 reads as follows:

"Under the proceeding 'Motions,' the government House leader may move routine motions that are part of the technical procedure of the House, such as for times of meeting and adjournment of the House, changes in membership of committees and similar non-substantive motions. These routine motions do not require notice."

As you can see, this is not an exhaustive list. This standing order is a bit more cautious than the Ottawa standing order, which is an exhaustive list, in a sense.

**Mr Noble Villeneuve (S-D-G & East Grenville):** My advice, when I'm in the chair, is that the House can do anything with unanimous consent. For example, Ron Eddy's on his feet and he's done his half-hour. Someone gets up and says: "I move that the member for Brant-Haldimand continue. Do we have unanimous consent?" Now, I was in the chair and I didn't hear "No." Someone apparently said no. I didn't hear it. The guy continued for another 10 or 15 minutes, could have had the floor for ever. Is that a routine motion? That's just a spur-of-the-moment thing, and when you're in the chair, you're told the House, by unanimous consent, can do anything. This is different: 25 people stand up. Sometimes we barely have a quorum of 20.

**Interjection:** We should cut it down to 20. They've got more members than we have.

**Mr Villeneuve:** We have to look at legislative consensus, which is not that everyone's in favour but there are no more than two, four or five against it, or something like Ottawa has.

**Interjection:** Scaled down to our size.

1420

**Mr Ramsay:** We're not here to rewrite the standing orders, so all we can do is somehow integrate some rules that pertain to independent members in relation to the standing orders we have to date. That would be another exercise. I think there needs to be, probably, an exhaustive study of all our standing orders—they're quite a hodgepodge—but that's probably another exercise for maybe this committee at another date.

**Mrs Ellen MacKinnon (Lambton):** I agree with what Mr Ramsay has said, but I see underlined in several places "recognized membership of 12 or more persons," some I see, I think, in order to be a party. Is this going to exclude independent members?

**The Vice-Chair:** Mrs MacKinnon, I don't know whether you wish research to answer. You're referring to the Quebec rules, I'd just note.

**Mrs MacKinnon:** The Legislative Assembly Act.

**Mr Sibenik:** If I can help the member out, the Legislative Assembly Act does use the expression "recognized membership of 12 or more persons," but that really deals with the indemnities and allowances that are due to certain officers and officials associated with the third party. That is why I have that. This is the only situation in which that expression is used in the Legislative Assembly Act; that is to say, in the context of the salaries and indemnities of the whips, the House leaders, the leader of the third party. That's why I included it in this particular attachment here, this particular agenda.

**Mrs MacKinnon:** Mr Chair, then are you saying that an independent member is not going to get his or her indemnities if there's just one?

**The Vice-Chair:** No, Ms MacKinnon. I think the Legislative Assembly Act refers to the additional payments to a leader of a party. Basically, what the act says is that in order to get additional indemnities as the leader of a party, you have to have 12 or more persons in the assembly.

**Mr Hope:** You can be the leader, but you'd be the only one.

**The Vice-Chair:** That's right: You'd be the only one and you wouldn't be paid for it. You wouldn't get any payment as leader. If there were 11 members, for instance, you'd just be paid like any other member.

**Mrs MacKinnon:** Oh, forgive me. Mrs Mathysen has explained it to me. I don't mean that you didn't, but now I understand. Thanks.

**Mr Sola:** I think 25 members, as in Ottawa, should probably be scaled down to reflect our numbers here in the House. Perhaps 12 would be a reasonable number, which is also associated with some other moves that we make.



**Mr Norman W. Sterling (Carleton):** In terms of dealing with the problem that we're trying to deal with here, that is, an obstreperous independent member denying unanimous consent, we may be reaching too far in terms of trying to resolve that problem. I'm not certain of all the nuances associated with a unanimous consent request and then denial thereof. I suspect, from reading standing order 45 from the House of Commons, that they bring forward of the whole notion of overcoming a denial of unanimous consent by an individual, or perhaps even two or three individuals, by saying that he can immediately place his motion in front of the House and then 25 members are required to block the motion. They do that during the question period time or immediately after the question period, when there are 25 members in the House.

I don't know whether it meets some of the problems we were talking about; for instance, trying to extend the hours by unanimous consent at the end of the day or some of the other examples that were brought forward.

Possibly, if we aren't willing to go to a fairly simple solution of saying that to block a unanimous consent request requires two members or three members, whatever number rather than just one, then we may be getting ourselves into a fairly important technical section which has far-reaching effects on all the parties and therefore, I think, would be difficult to deal with unless you can gain some experience around this.

I'm concerned about giving the government the power, for instance, to have an immediate vote on a motion in the middle of the day, somewhere along a debate, to have unanimous consent to do something. Therefore, I think we're getting into a situation where we don't know all of the nuances involved. At 5 o'clock in the afternoon, if the government House leader or a minister of the crown or somebody stood up and said, "I want unanimous consent to debate this thing," or to change some motion dealing with closure or whatever the hell it would be—excuse my language—I don't think you'd find 12 members in the House at that point in time or you might not find five members in the House in opposition to block an immediate vote on the motion, even though one might stand up and say, "No, we're not going to give you that." You're getting into, I think, a fairly complicated kind of thing which requires a great deal of thought in order to amend the standing orders that way.

Because we haven't experienced that obstreperous member or independent member who has taken advantage of that position, in my own view, I would rather one member still have the right to block unanimous consent, rather than start to deal in a large extent in what's happening. I suggest that if that does happen, what will happen is that all the House leaders will agree to change the rules very quickly in our Legislature.

Maybe in a House where you have 300 members, like

they have in Ottawa, or close to 300 members, you may have to have a rule like rule 45 in their standing orders. I just think that we're getting into more, really, than the problem requires to resolve. I would rather pull back my concerns about unanimous consent being held back by one member than get into this kind of resolution of that kind of problem.

**Mr Morin:** David, did you listen to what he said about unanimous consent?

**Mr Hope:** Yes, he's pulling back because he can be euchred.

**Mr Morin:** No, it makes sense. If it ain't broke, don't fix it.

**Mr Hope:** The government can do whatever it pretty well wants. If you don't have the opposition members there in the last few minutes of the House sittings, let me tell you, you could do just about anything you want to do.

**Mr Morin:** Sure. Sorry, Mr Chairman, I got carried away.

**Mr Hope:** It doesn't sound too bad right now, though.

**The Vice-Chair:** Are there any other questions. I guess, Peter, you can continue.

**Mr Sibenik:** Okay. Proceeding to the second page, if we look under heading 7, this deals with committee participation rights. There were a number of questions yesterday having to do with the procedure in Quebec and in Ottawa with respect to independent members. I've quoted a few standing orders there from Quebec.

1430

The first one is standing order 122. The first part of that particular standing order is not unlike our standing order 110(a). It says that the composition of committees must reflect the strength of the political groups in the House. The second part of it is the wrinkle they have in their standing order, the fact that it says the composition must also take into account the presence of independent members in the assembly. This particular provision, taking into account the presence of independent members, appears in quite a few other standing orders in Quebec, and I have appended a copy of the Quebec standing orders that take that into account. So that is the particular wrinkle that they have there.

**Mr Sterling:** What does it mean?

**Mr Sibenik:** It means that there is some discretion, I think, on the part of probably the House leaders to determine the slotting of independent members on particular committees. I believe that this standing order was worded in such a way so that there would be some flexibility. It seems to me that the primary aspect of it is the fact that the numerical strength of the parties has to be reflected in the committees but to also take into account independent members' presence. I don't have any indication from my correspondent in Quebec City

on the exact way in which this particular standing order is interpreted, but it seems to me that that is the way: the achievement of flexibility for the purposes of the party standings and independent members.

**Mr Sterling:** The way I would read it would be to say that in our situation the government would still have to have a majority on any committee, but you'd have to fit in the independent members some way, and you may have to have the composition of some committee changed as a result of that.

It's negotiated now that there are three Liberals, two Conservatives and, what is it, six or seven government members. It seems to me not a bad way to deal with it. As long as you have your majority in wherever it is, presumably in a majority government that's what you're worried about. It leaves it at a bit of negotiation and reasonableness on the part of both the House leaders and the independent member. I think it's a good solution.

**Mr Hope:** Does that raise all the numbers of every committee?

**Mr Sterling:** No, no.

**Mr Hope:** Let's just take it hypothetically and say there are four committees running. The independent member says, "Okay, I want to be on all four."

**Mr Sterling:** The House leaders say no.

**Mr Villeneuve:** Because you can't be on all four.

**Mr Sterling:** I can't be on every committee; you can't be on every committee.

**Mr Hope:** I can be there; I just don't get paid. You just don't get compensated for that process.

**Interjection:** Nor can you vote.

**Mr Sterling:** It's the voting.

**Mr Sibenik:** I think there's a difference here between an independent member who is made a permanent member of the committee as opposed to an independent member who is not a permanent member of that committee. The non-member would not have any right to move a motion or to vote or to even stand as part of the quorum, it seems to me.

**Mr Morin:** That's the way it is.

**Mr Sibenik:** Yes. Any non-member has the right to participate in our proceedings, subject to what the committee decides, of course. The committee can order otherwise under our current rule. That in fact is what the next rule, standing order 132 in Quebec, has to say. It is basically similar to what we have in our standing orders. A non-member of the committee can participate, although it does say "with leave of the committee." In our standing order, it doesn't really say "with leave of the committee;" it just says that the committee can decide otherwise.

Then it says that there's no right to vote or to make a motion. In our standing order, it says that the non-

member cannot, in addition, stand as part of the quorum. I'm not sure why Quebec doesn't have that particular provision in here as well. But in any event it says that. There's a specific provision dealing with the estimates that leave wouldn't be required in that situation.

**Mr Morin:** But he still has the power to influence by bringing convincing arguments and debate, even though he can't vote, that could sway the opinion of the others.

**Mr Sibenik:** Standing order 133 in Quebec is a particular provision with respect to the consideration of bills in committees. The provision in Ottawa that is germane is standing order 119, and I believe it's almost word for word like Ontario's current provision in our particular standing orders. Again, it deals with the voting, the moving of a motion and stand as part of the quorum.

I should say that I did some research into the area of the rights of independent members who are permanent members of a committee, and it appears that they have the full rights that any other member of the committee has. This is the case both with respect to Quebec and with respect to Ottawa.

**Mr Morin:** Who decides to give them that power?

**Mr Sibenik:** If there's no standing order or order of the House otherwise, then they automatically have the same rights as any other permanent member of the committee. One of the rationales, I believe, for not putting restrictions on the rights of independent members who are members of the committee is that there's a perception perhaps that we'd almost be making them second-class members of the committee if they didn't have the right to vote or move motions or stand as part of the quorum. They are members of the committee and hence they have the same rights as other members of the committee, subject to what the House says otherwise, whether in the standing orders or by order of the House.

**Mr Ramsay:** Do any of these referenced standing orders give some guidance to the House leaders as to how the vacancy from one of the opposition parties on a committee would be decided upon to fit in the independent members? You have the balance, as Norm talks about, of course, that the government has to be in the majority. Or is that just left to be worked out and then each party would take its turn and say, "Okay, we'll have one less Liberal on so we can put in an independent"? How is that all worked out?

**Mr Sibenik:** There's nothing official that's indicated.

**Mr Ramsay:** It would have to be worked out if you give full rights, obviously.

**Mr Sibenik:** It is worked out.

**Mr Sterling:** It's worked out in every Parliament



that we've gone through in terms of the representation from the various parties. The House leaders sit down and say, "What's a reasonable way to allow a majority government to have its majority and have participation from the other parties?" That's really where you start from. The general rule, I think, is that the smallest party usually gets two members or they try to have it with two members. Therefore that is the benchmark from which you start to formulate how many people are going to sit on your committees. I think that we should take 122 of the Quebec standing orders and do that within our standing orders.

Which standing order are we talking about in ours that would have to be modified in terms of the composition of committees?

**Mr Sibenik:** That would be 110(a).

**Mr Sterling:** Can you just read that for me? I don't have mine right in front of me.

**Mr Sibenik:** Standing order 110(a) reads as follows: "No standing or select committee shall consist of more than 11 members and the membership of such committees shall be in proportion to the representation of the recognized parties in the House."

**Mr Sterling:** It has a max on them, eh?

**Mr Sibenik:** It says 11 members maximum in the standing order.

**Mr Sterling:** Do you know when that was changed to that or do you have a notion on that, Peter, at all? When it was changed to a maximum of 11 or whatever?

**Mr Sibenik:** I could find out. I don't know offhand, no.

**Interjection:** It was 10 during the minority.

**Mr Sterling:** I wonder whether we changed that. I don't know why we have a maximum number. It's not in the interests of the House leaders to have huge committees, because they have to man them. Therefore it seems to me that House leaders coming together have to come to a reasonable conclusion. I'm just wondering, because a maximum of 11 might cause a problem in our present structure if we're going to fit an independent member in.

1440

**The Vice-Chair:** If I might just make a comment, if you can give me the leeway on this issue, it seems like in some of these areas we're getting into this whole problem of changing the rules, as distinct from trying, say, to accommodate an independent member. It seems like the question of members in a committee again falls within the question of a rule change. As Mr Sterling says, if you're going to change the rule, you'd have to change it to say that the select committee or standing committee shall consist of such members as the House leaders may—I don't know, but it looks like you're getting into the whole area of changing the rules.

That's the only comment I'd have to make about it, as distinct from trying to do minimum changes with respect to accommodating independent members. It would seem that you have to perhaps almost limit your rule changes if you're going to try to avoid getting into the whole question of opening up the rules at this time, or maybe we should postpone it.

**Mr Sterling:** But you have to change some in order to accommodate them. We were getting into a whole other issue when I was talking about rule 45 in the House of Commons. I would change 110(a) and forget about the number of members on a committee and say that the composition of the committee must reflect the numerical strength of the recognized parties and take into account the presence of the independent members in the assembly. Leave it up to the House leaders to decide how many members are going to be on it.

**Mr Hope:** You would also have to change (c). Let's say you had more than one independent member and they wanted to substitute; one wanted to go from one committee to another committee. Would you allow them to make the substitution? You can't go back into the House and change the membership, but the two independents want to switch their positions. One independent might be on one committee and another one on another, and they want to exchange; they can't exchange seatings on the committee because of (c).

**Mr Carman McClelland (Brampton North):** It almost goes without saying that it's a small side issue, but I think it's worthy to note that human nature being such as it is, when we indicate there is a maximum, it seems we always rise to that maximum. We forget sometimes that there's no floor, if you will, either.

I think the suggestion made by Mr Sterling drawing on the Quebec model affords a little bit of that flexibility. I think there are probably committees that would be well served with having perhaps two government members and one from each opposition, by way of example, or perhaps four government members, one from each opposition and maybe a representative of an independent. We often use the subcommittees or steering committees to facilitate a lot of things that are fairly substantive. It seems to me that it might reflect really a changing methodology of government, an evolution in government that I think is sensitive to efficiencies that we all have to look for.

I don't want to presume that because you leave it open-ended—I don't think you're going to have a huge number. I don't think you're going to see committees burgeoning into 20- and 30-person committees. I think political realities are such that it's not going to happen. I think it's self-evident to say that having set a maximum, we tend to rise towards that. It's almost implicit that by saying we have a maximum of 11, we'll have 11. Perhaps by opening it up a little bit, we might have a bit more creativity.

There may, by way of example, be committees that are better served with 13 individuals, just to pull out an arbitrary number, just because of the particular makeup of the issue. Representation would be geographical, political and so forth. There may be other committees that would be well served with five members.

I think we have to open up our minds and not get locked into the formulae that we have been locked into in the past and have some creativity in our government. I think Mr Sterling's suggestion affords that opportunity. I just want to put that on record and say, in short, I speak in favour of serious consideration and I'd be prepared to support that as a recommendation.

**Mr Ramsay:** I'd like to second that. My two colleagues who have just spoken make some very valid points about recomposing our committees and the way we work around here. I think both Mr Sterling and Mr McClelland make very good points, and I would support that.

I just want to say also that in the future, as the remuneration packages change, I think you'll find that the need for committees as large as we have had in the past will probably diminish also.

**Mr Morin:** He means the per diem.

**Mr Ramsay:** Mr Chairman, I'm being interrupted by my colleague here on the left. I'm very upset.

**Mr Stephen Owens (Scarborough Centre):** Just watch out for the tears.

**Mr Ramsay:** Yes. So I would think for many practical reasons, for flexibility and for some of the practicalities we'll be facing later on with efficiencies of government and the way remuneration probably will be struck in the future, that it makes eminent sense to give a little more maybe trust to the camaraderie and the ability of the House leaders to agree with each other in striking the composition of committees and to allow the introduction of independent members. I would concur with Mr McClelland and Norm Sterling that we not put a maximum on, but therefore not put a floor on either, and allow the House leaders to strike committees at the beginning of each session.

**The Vice-Chair:** Yes. Could I just ask a question for clarification from legislative research? In other jurisdictions, is there any sort of indication of what size committees are? For instance in Quebec, do they have committees that are of larger and smaller sizes? I think it might be of assistance.

If I might indicate why I asked the question, I'm remembering in our exchanges from the province of Quebec that I somehow get the indication that their committees are much larger when dealing with legislation. They, in effect, have most of their debate with respect to legislation occur in the committee rather than the Legislature. If you're going to have varying numbers in the committee, it certainly would open it up for

having more of your debate take place in the committee, as distinct from the Legislature. That's my recollection.

**Mr Morin:** I think it's really healthy.

**The Vice-Chair:** Yes. That's why I asked the question.

**Mr Sibenik:** You can take a look at this in your copy of the Quebec standing orders. Standing order 121 says the following: "Each committee is composed of at least 10 members, including its chairman and vice-chairman. Members are nominated to committees for two years."

Then it goes on and discusses in standing order 122 the composition of committees, the numerical strength provision that I've already spoken to.

Then standing order 123 says, "No member may be named to more than one committee." It goes on, there's another provision with respect to that, but that's the basic rule.

**Mr Sterling:** What do they do for substitution there? I was interested in Mr Hope's comment. Do you know what they do?

**Mr Sibenik:** If you can give me one moment here.

**Mr Sterling:** I think to meet the objection of Mr Hope, you would just say that the whip of a party could do it or the individual member could do it. I have no objection to that.

**Mr Sibenik:** Are we talking about temporary substitution? That would be standing order 130: "The temporary substitution of a committee member is valid only until the conclusion of the business under consideration. The committee must be informed of the substitution on entering on the consideration of business." That particular provision doesn't say how the substitutions are accomplished here.

1450

**Mr Owens:** In terms of time frames, it talks about the onset of business. Is there a time frame similar to ours with regard to having to have substitutes within the first hour?

**Mr Sibenik:** Thirty minutes. There's no provision here for that in this particular standing order.

**Mr Sterling:** I'd just change (c). If we were going to change 110(a) and say that it will be similar to 122 of the Quebec rules, I'd just change (c) and say that the notification will be signed by the member acting as the whip of a recognized party or the member of a committee—I don't know exactly if that's the best wording or not—is filed within 30 minutes, or whatever is required.

**The Vice-Chair:** Yes, Mr Hope?

**Mr Hope:** I've got my name on there and everybody else seems to be going. In keeping with a ceiling, if you were to say in 110(a), "No standing or select committee shall consist of more than 11 members and the membership," I'm wondering where it deals with the represen-



tation. If you made a clause there that it consists of no more than 11 but the power of the committee be established to the government side, isn't that what you usually do anyway, that the government side always holds the power? If you were just to say that you could still go with 11, that allows an opportunity for an independent member to participate, but then it would also indicate that the power of seats be allocated to the government side, that the majority of seats must be to the government side.

You shake your head, Norm, but you start getting into numbers and I'll guarantee you we're going to have some issue where we're going to sit there and we won't have it covered. We'll probably have about 40 people and we'll see who can outjockey whom on numbers. It will happen, Norm, because there are games going on all the time. I'm just trying to keep it consistent so that if you want to raise the number of 11—

**Mr Sterling:** The problem with your suggestion, Randy, is that what you are in effect doing is knocking a Conservative or a Liberal off the committee, under the present scenario that we have at the present time. If that particular independent member had an interest in the standing committee on resources development or whatever and the two opposition parties did not want to diminish their representation, in particular the Conservative Party in this scenario because we only have two members on the committee, I don't think the third party in the mix is ever going to want to give up. It's going to shove the independent member to perhaps the less significant—

**Mr Hope:** Just wait a second.

**Mr Sterling:** I'm just playing with numbers in terms of what we're saying.

**Mr Hope:** So what if you have a special clause even dealing with an independent? For every additional independent who participates in a committee, an additional government seat will be allocated. What's the magic number? Do you put no number or do you put a control mechanism in place? If we don't have any independents, then 11 works fine. For every independent who wishes to participate on a committee, an additional seat will be allocated to the government side. That way, if you have three independents out there and they all want to participate, then there are additional seats that are put on the government side to make sure the majority stays.

**Mr Sterling:** I think Mr McClelland's argument makes a lot of sense.

**Mr Hope:** That's a matter of opinion.

**Mr Sterling:** For instance, in the Legislative Assembly committee here, quite frankly I think we could get away with one member from my party, the Liberals probably could get away with two members from their party, and I think that you probably could get away with

four, plus the Chair. But I think because we have the maximum of 11 in the rules, that's why we're in the numbers we are here in this particular committee. That's probably the case as well on—I can think of another committee, the regulations one, which is one of the most interesting committees one might want to serve on in this Legislature. I'm being facetious.

The House leaders might say, "Hey, rather than having to send three Liberals and two Conservatives and six New Democrats down there, let's cut this one down because their work is dealt with pretty summarily," and that kind of thing. I guess what I'm saying is—

**Mr Hope:** Let's use the other scenario, Norm. You're saying the understanding approach; let's use the non-understanding approach. Let's say we have a great bill out there that's a PR bill that could win a lot of popularity. Let's say I'm the House leader of the third party or the second party, whatever, and I come forward and say, "Look, I've got 28 of my members who want to sit on this committee." Then where are we at with the House leader arguments?

**Mr Sterling:** But you only make that decision on select committees. You don't do that on standing committees. There are so few select committees—

**Mr Hope:** No. If you're talking about removing the maximum of 11, no more than 11—let's say we just remove that. Now I come into the House leaders' meeting and we have a good bill so we're going to make life miserable for everyone because we're opposed—

**Mr Sterling:** But the standing committees are struck—

**Mr Hope:** But just wait a second, Norm.

**Mr Sterling:** —before any business is on the table.

**Mr Hope:** Come on, Norm. You're going to sit down and you're going to remove the numbers; you're going to remove the number of the committee. Don't shake your head. Let me tell you, I'd be doing it if I were in opposition and I had a good PR bill out there and all my committee people who want to speak on behalf of the bill on my side of the House—I'm going to say, "I need that." Where are you then with the arguments or the discussion that's going to take place around the House leaders?

**Mr Sterling:** The House leaders strike the committees before there's any business on the table.

**Mr Hope:** The process of this is to allow the independent participation in committee structures and in the House. That's what I thought the intent of this was. I'm saying the current rule that is there applies to the recognized parties. If you're asking for an independent to participate in committee, then you say for every independent who wishes to participate, an added number to the government side accompanies that so they still hold a majority.

When I began this committee my understanding was to identify the participation of an independent member, not to start changing the three-party rules that are already applied. I've been listening to the conversation. I'm saying, you want the independent to participate? Fine. The 11 holds true for all of us, but if you're going to add an independent into a committee, then an extra person is added to the government side. That's where you're allowing the independent to participate in the committee structure.

**Mr Ramsay:** Mr Chair, I think if we're to get anywhere in the remaining time for this committee you have to find a consensus in this committee on what the premise is of this discussion. Is it, as you have suggested, that we are to amend the rules to accommodate the participation of independent members, or do we have the mandate to do that and also actually change the existing rules of procedure? I think that has to be decided or we'll be arguing all day, because we're arguing from different premises here.

**Mr Hope:** It says the role of an independent member.

**Mr Ramsay:** One suggestion you could do if you decided on the former, which I think is the mandate here, is we also could then make recommendations that House rules should be changed to accommodate other efficiencies that we see could come from this, that in our discussions have come up. I think that needs to be decided.

**The Vice-Chair:** Okay. If I might just take the liberty of following up on what Mr Ramsay has said, I think what he's suggesting is we should not be trying to draft the rule change. If we're going to agree on a consensus, we agree that the committee, shall we say—I'll just throw it out as maybe a suggestion for consensus. We agree that we should look at changing the committee structure to allow participation for the independent member and that any such changes shall not in any way adversely affect the voting rights of any of the parties within the committee. That would protect the majority situation; it would protect the minority situation. Then that leaves it up to the House leaders to come up with the language.

1500

**Mr Ramsay:** My suggestion was beyond that: It was to really define the whole premise of this exercise. Are we just to be accommodating the participation of independent members without really drastically changing the existing House rules or do we go right into all the House rules? We have to decide one way or the other. Then, once we decide on the premise, I think these changes should flow fairly easily.

**Mr Morin:** The way Mr Sterling expressed it I think is very clear. Committees are created at the beginning of the session, they are formed that way and, of course, this would be taken into consideration. It could not be

changed. The situation that you describe, Randy, I don't see how it could happen, because the committee is already created, taking into consideration the majority of the government and also based on the numbers in each party, and the independent fits there. We don't have that many independents.

**Mr Villeneuve:** The elected independent. The independent who comes later has to be handled in a different fashion. You have, at the beginning of a session, the elected independent. Then the independent who becomes independent through the course of the Parliament is a slightly different animal.

**Mr Sterling:** But the motion for the membership of the committee has to pass in our Legislature anyway. The government holds it. They can say: "No way, José, we're not going to change this. We're not going to allow this independent," or whatever.

I only say to you, Mr Chairman, the more specific we can be about what changes we might want to put in the rules, the easier it is for our House leaders to deal with. If you want to be very generic in terms and say nice things about independent members being involved and not suggest how it might be done, we might be waiting for ever in order for it to be done. It's very, very difficult for them to deal with the spinning out of what you mean unless you actually have the rule in front of you.

When I was involved in the negotiation of these rules before, on two occasions, quite frankly, I didn't trust the clerks and the lawyers to come up with the wording that I wanted. In fact, the wording in the standing orders didn't accurately reflect some of the deals we struck between parties before. I'd be much happier going to them with as close to the wording as you possibly can, because they will immediately react to what you're saying and say, "What does this mean?" and you're going to have to show them the standing order for them to agree or disagree with what you're proposing.

**Mr Sola:** I think we've been arguing about an ideal type of situation. We're not really looking at the real world. I've sat on countless committees in this Legislature in the last six years, some with a very high profile like Sunday shopping and auto insurance, where it seemed very sexy to be on them, but during the course of the hearings, it would be very difficult to find what one would call normally a quorum on the committee. Even the government members, but especially the opposition members, who were stretched very thin at that time, two apiece, had very difficult times in covering the province and having the committee serviced. The critic for the committee would be a member of another committee having to sit in Windsor while the committee that he was critic for was sitting in Ottawa. Quite often, you would have to have permission to start the committee without one or the other of the opposition parties present or without even a very significant



showing from the government side. Let's take reality into consideration.

Right now, it is a very sexy topic to be on the committee. When the committees get going, and especially if they get dragged out, it becomes very sexy to get off. We should allow for participation by independent members, but also take into account the fact that sometimes the opposition parties will be happy to have somebody sitting on the opposition side, whether he's from one party or the other party or independent, just to fill out the seats. Right now, there is sufficient representation in both opposition parties that this shouldn't be a problem, but when you had 16 and 19 members in opposition, it was quite difficult to put enough members to account for the proportion that was allocated to the opposition.

Standing order 122, as I see it, touches all the bases, must reflect the numerical strength in the House and also account for independent members.

As far as substitution, I don't think independent members should be allowed substitutions. Substitutions are there to reflect the composition of the party. An independent member runs in his or her own riding. He does not have representatives throughout the province like the parties do. So therefore, if there's some issue that comes up that specifically affects his or her riding or that is of an intrinsic nature, a matter of principle, accommodation can be made that he or she can substitute for a sitting independent member. But other than that, I don't think it should be a problem.

**Mr Hope:** Again, when we started this conversation we started talking about the role of an independent member and what he did in a committee. You're telling me and I heard—

**Mrs MacKinnon:** He or she.

**Mr Hope:** He or she. John has just indicated that the numbers that are currently established are sufficient. I've heard Norm talk about, "Well, the House leaders and the whips will do this."

Let's talk about John's case, for instance, who wasn't part of it. He was elected but something happened, and he now is independent and now he has the opportunity and he wants to participate in a committee. It's too late; you've already announced in the House who was going to sit on it. Where's his actual role of becoming a participant in a committee structure, in a committee that he feels important to his constituents and wishes to travel across the province or wherever? Where is his role?

That's when I said that if you sit there and you clearly indicate in our rules that 11 is a comfortable number, as it is, and if during the session something happens where an individual leaves his party and decides to sit independent, but the issue over which he left is now going before committee, where is his

opportunity as an individual, as an independent, to get on that committee? He has none, because it takes the House leaders to introduce a motion to get him on the committee.

Let's say, for instance, that John was to say to the Speaker of the House, "I'm serving notice to you that I would like to be sitting on this X committee to represent my constituents." He's now served the Speaker notice, the Speaker now can serve the House leaders notice and the thing is, the government will now have the right to allocate an additional person to be seated on that committee so the balance of power is there. It's fine if you're talking about somebody who got elected as an independent, but let's talk about the person who leaves, for whatever reason, during the session, over a piece of legislation, and now wants to participate. He has no participation because he has to go to each of the three political parties whips' office or House leaders and ask them for permission. It's no independents.

But if you clearly indicate that an independent will have access to a committee as long as, for whatever procedure you want to set up—serving notice to the Speaker about what committee he wishes—then you don't need to go back to the House. It's automatic that the government, by virtue of its position, has the additional seat to make sure it holds the majority in a committee structure.

That's what I've been focusing on, not so much the rules. The rules, as they are, for the three political parties are fine; it's the independents' participation that I've been focusing on. If you're going to make any changes, the changes you ought to make are to accommodate independents, and whenever they decide to become independent, whether it's at the election time or during the session, they have a right to get to a committee and participate in it without having to wait for the government to introduce a motion or for the three leaders to agree that the individual can participate.

We're talking about independence, and the independence would be to serve the Speaker notice so that the Speaker then can allocate an additional seat to the government side of the House so the balance of power is there with the government.

**Mr Sterling:** But who is the member? All our committees are struck on the basis of a motion in the House as to the membership of each committee, and I don't think we should change that process around and start having the Speaker with some kind of power to say some member is going to sit on this committee or on that committee.

1510

**Mr Hope:** That's not what I'm saying. Your current rules, Norm—

**Mr Sterling:** Our committees are struck by a motion—

**Mr Hope:** Let me put something clear to you. You have to understand that the current rules that apply to the three political parties are fine, but you're talking about the independence of a member who has no party, no House leader to answer to and no whip to answer to, who now wants to participate. How? Who do they go to?

**Mr Sterling:** He just walks into the committee. He can participate in anything.

**Mr Hope:** He can walk into the committee today, yes, and he cannot vote.

**Mr Sterling:** That's right. I can walk into any committee.

**Mr Hope:** But we want to give him the opportunity to vote, don't we?

**Mr Sterling:** We want to give him the same opportunity as any other member has to participate in one committee.

**Mr Hope:** Who, then, during the session—the motion's already been put of who all is sitting on the committee, and then two weeks later somebody leaves their political party and sits independently. Then how is that individual going to get to that committee when the committees have already been established?

**Mr Sterling:** Because we have a motion in the House.

**Mr Hope:** So we in the House are now going to have to decide whether that individual can sit on that committee or not, right?

**Mr Sterling:** That's right.

**Mr McClelland:** That's what happens now anyway.

**Mr Hope:** That's not allowing independence.

**Mr Sterling:** That's what happens.

**Mr Hope:** It happens now with the three political parties, but you're talking about the role of an independent. What's John going to do? If John wanted to participate on this committee today, he would have to have—listen, don't shake your head. John would have to have somebody introduce a motion for him in the House so he can sit on this committee. Where has his independence gone? It's gone because you have to allow somebody else to introduce the motion.

**Mr Sterling:** As long as we guarantee in the rules that he has the right to sit on a committee.

**Mr Hope:** No, then you really don't truly believe in the independence of a member. You truly don't believe in it if he cannot reply to the Speaker of the House. So really what we're doing is trying to change rules for nothing.

**Mr Morin:** I think, Randy, what you're trying to say—and I understand it clearly. You want the member to have an opportunity, whenever he chooses, to be able and go, first, to voice his opinion. We know that he can do that now. He can do that without any hesitation,

without being a member of the committee. But what you'd like him to do is to be able to walk into a committee and have that right to vote.

You can't have both, because at the beginning of the year he's elected, he's chosen, and he will be on that committee for ever unless there is a motion in the House. This happens quite often. Remember, when members leave from one committee to another, it has to be a motion, and it passes. Why does it pass so easily? It's because House leaders got together.

If I was to be an independent member and I found a particular issue that I really wanted to be involved in, the House leaders would understand that, because I'm not there to go and create problems; I'm there to go and debate an issue which concerns my constituents. I believe in the ability of the House leaders to understand that. But to give flexibility to an independent member to go from one committee to another, to be able to vote, even I, if I want to go on your committee, on whatever committee you sit, I need an authorization and must give it to the clerk. I have the authorization to vote, but I don't need an authorization to go and talk. I can do that.

So I don't see where—I know you're trying to give him as much power as you can, but that independent member should be no different than you, should be no different than me.

**Mr Hope:** That's right. I'm trying to give him equal power.

**Mr Morin:** He does, as long as the House agrees.

**Mr Hope:** I have an opportunity to present to my side of the House what committees I want to sit on and which ones I have a particular interest in, but to that independent member who wants to participate—I'm not saying that he can be on every committee; he's entitled to one committee. But who does he answer to? He has to answer to the House leader, somebody to introduce a motion, who will probably be the House leader of the government side who has to put the motion forward. What if the cooperation is not there for that independent?

**Mr Sterling:** What if the cooperation is not there that I want to sit on a committee and my whip or my House leader says—

**Mr Hope:** But that's your party problem.

**Mr Sterling:** But I've still got to deal with it.

**Mr Hope:** Norm, I'll go right back to your own comments and I'll go back to the comments that were made yesterday talking about the party itself has to get its act straightened out about its roles, and I think Mr Morin brought that out in his speech yesterday about the parties themselves having to get themselves straightened out. If you want to belong to a party, okay, but the independent has to have an opportunity to participate and participate in a debate.



I know we're talking too many at a time.

**The Vice-Chair:** Yes, I know. I'm asked if we could please try to get back to my recognizing people. I don't know who's next on my list. I thought it was you, Mr Morin.

**Mr Morin:** Yes, it was. I will just continue one minute.

I agree with you that if we could accommodate the independent members like everybody else, that would be great, but this isn't the case. They're a minority and they have to choose at the beginning of the session which committee they want to be on, and we're agreeable to give them that. But if there is an unusual circumstance where he has to be there, surely the House leaders would be in a position to understand that and a motion could be passed, or perhaps just handing him a ticket: "Look, I've had the authorization to be there." I'm sure that could be done.

Sure, there are arguments that sometimes we've got trouble to speak to each other, but I would say that 95% of the time we do cooperate, and I think we allow each member his or her full rights. This is, I think, why we debate today, to make sure that independent members have rights. If we have any difficulty with House leaders, then what prevents us from bringing it back? They're making it tough for the members. Because procedure is a living thing. It evolves; it's fluid. It's got to change. If it doesn't suit us, we change it, and we have that power. But we've got to start somewhere.

**The Vice-Chair:** If I might ask a question of legislative research again: If we were to incorporate a rule in language similar to 122 from Quebec into our rules—that is, that the composition of the committees must reflect the numerical strength of the parliamentary groups and take account of the presence of independent members of the assembly—this of course is an interpretative question, but would it be fair to say that this would put a requirement on the House leaders to ensure that an independent member was a member of some committee of the Legislature?

**Mr Sibenik:** The answer is that it would not necessarily require the House leaders to place an independent member on a committee of his or her choice. However, it is taken into account. I can refer you to the situation in Alberta, where, if you can turn to my summary of what happen in other jurisdictions, I've indicated at the bottom of page 1 that independent members may serve on legislative committees, although representation on committees is in proportion to representation in the House. An all-party committee is established for each session to recommend the membership of all standing committees. An independent member would be consulted regarding his or her preference for committee service.

So I think that the Quebec standing order does give

some flexibility. I think the primary consideration is the first criterion; namely, the proportional representation in the House. The secondary criterion, it seems to me, is the presence of independent members. That seems to be the ranking. That's the way that it would be interpreted, it seems to me.

**Mr Ramsay:** I guess it's settled, then.

**The Vice-Chair:** Mr Ramsay, do you want to be recognized?

**Mr Ramsay:** No.

**Mr Morin:** Does that help, Randy?

**Mr Hope:** I don't agree with it. No, I'm sorry. I don't.

**The Vice-Chair:** Mr Hope, you don't agree with the Quebec—

**Mr Hope:** No. I'm here to talk about an independent who's supposed to be and can be a party in himself. One person can sit over there and call himself a party; it just doesn't meet the membership in the financial end of it. Let's take it away from an independent or an individual. An independent could be two people; it could be three people.

**Interjection:** Or 10.

**Mr Hope:** That's right, as long as it's under the 12 number, before you're considered status. You've taken away their rights—or you haven't taken away, because they don't have any to begin with. That's why I'm saying if you use the current rules that apply to our committees and then allocate—I'm only looking for ways. I don't have the legal terms; I'm sure we could come up with them. But I just believe that the independents, whether it be two people, should not be dependent on the three political powers that are in the place but also just to allow them the opportunity to participate in a committee.

Let's say that if there was an independent group out there, and I say "group," which is under the 12, but there happen to be four of them, and all four of them want to sit in a committee, you don't want that to happen for the simple fact that the Tories are only allowed two on a committee. So they can't be out-powered—

**Mr Sterling:** That's right, and you don't want to have them—

**Mr Hope:** Right. And you can't—

**Mr Sterling:** They don't have the staff—  
1520

**The Vice-Chair:** Mr Sterling, you're creating problems for our transcribers.

**Interjection:** He needs to be closer to the mike.

**Mr Hope:** It's all right. We don't want to hear him anyways.

*Interjections.*

**Mr Hope:** I don't want the opposition to be outnumbered and allow the independents—and I use that in the plural form—to have more rights. But at the same time, I would like an independent member, if one is in the House, to have an opportunity to participate in a committee without having to go through a motion in the House. Let's say he chooses to be independent while the House is not sitting. Where's the right of the individual?

**Mr Sterling:** Where's the right of the House to appoint a committee?

**Mr Villeneuve:** Exactly. You can't forget that.

**Mr Owens:** Gilles Morin yesterday talked a little bit about discretion of the Speaker, and the more I think about this, the less I like the idea of enshrining things in the standing orders.

**Mr Hope:** I think you better read this piece that Gilles gave yesterday, because that's what I've been moving off of; it's philosophy which Gilles had put forward and it seems like everybody's ignored it.

**Mr Owens:** I'm concerned in terms of appointing extra bodies to committees and in terms of what happens at the end of the day with respect to the government's agenda and maintaining the balance of power that people clearly have voted for. I'm sure when Dave Peterson was the Premier, he certainly liked to get his agenda through, just as Bill Davis and just as Bob Rae do as well. So how do you maintain that balance in terms of numbers if all of a sudden today we decided, well, we will appoint an independent member because this member has a burning issue that he has a passion for? I don't want to undermine that concern, because it's valid. From time to time you see business taking place in other committees that you would truly like to participate in, but for reasons beyond your control, you can't.

I have some trouble in terms of balancing what I see as a legitimate request to have independent representation on a committee, just as we discussed yesterday with regard to the ability to withhold unanimous consent. You know, is it possible for that individual to hijack the proceedings of a committee or derail the business of that committee as opposed to the democratically elected majority of Parliament that we would have to exercise our right to govern? I have some trouble with this.

So in terms of looking at enshrining versus discretion of the Speaker—and I'm sure Mr Morin, in his role as Deputy Speaker, would be quite judicious in his allocation of that right, but I think there still needs to be some further thought in terms of maintaining the balance of power and enabling the government to do its business.

As the chairperson of the government caucus, and Norm, as the chair of the third-party caucus, we're going to have to go back to our respective caucuses and say, "Listen, folks, this is what we've recommended." I think there's going to have to be enough latitude

within the report that people are going to be able to feel that their right, for instance, on the government side to have an agenda move through is not going to be affected by the allowance of independent members, whether it's in committees or votes in the House or whatever the direction that we may head off on in this particular committee.

Again, I think that we should be looking more at discretionary authority as opposed to codified. Gilles, you mentioned something about the House leaders and the agreement that House leaders could come to.

**Mr Morin:** Would you like me to answer that?

**Mr Owens:** Sure.

**Mr Morin:** If I can make a suggestion, because I can see your fears, Randy, and I can also understand your fears, I don't want to pass the buck, but why don't we ask Peter if there is a way that you could take into consideration what has been said today, and if there is a way that you could alleviate these fears—if I were in government, I'd have the same fears you have; I'd want to keep control; I've been elected and I have that power—to make sure, first, that the government will not be affected, that it will always have the majority. That is important. We rely on you to tell us that.

Secondly, is there also a way that if we accommodate the independent member that we don't give him more privileges than any others but also that he has privileges?

If you could look at that and come back to us and say, "No, the way it's presented, there's no problem for the government itself," because we don't have the last say. It's going to be brought to the House. They may say, "We don't like it," but we may ourselves like it, and then it will be up to us to sell it, and say, "Look, no, there are no fears." Does that make sense, Mr Chairman?

**The Vice-Chair:** Yes, I think that's a good—

**Mr Hope:** While you're thinking about that, refer to page 5 of Gilles's comments yesterday. It says: "We might want to put ourselves in the shoes of an independent member and try to see how we could represent our constituents with the limited means presently available. How would we wish to be treated? Would we not be frustrated by the silence and inaction that is imposed upon us?"

I've taken those words that you said yesterday, Gilles, and I've said, "I'm going to put myself in the place of an independent member." I don't ever expect to be there, but I want to do that, and I'm sitting there saying, "Should I have to be accountable to the other two or three political parties?" Meanwhile, I'm not getting along with any of them. I've left one and I'm not going to get along with any of them. It's that frustration where you can go to the Speaker—and that's why I said the Speaker—who is supposed to be non-partisan in his



nature of acting as a job and allowing true, democratic process of the individual.

I heard comments the other day talking about how the role of the Speaker has diminished and rules have been coming in. You guys made all those comments. I wasn't here, so I'm reflecting and I've been listening to what you've been saying. I'm saying that now is an opportunity to maybe restore some of that.

With the scriptures that you have provided me with, Gilles, your expert long-time knowledge in this House that I've been listening to—and I seem to be the only one who's listening, because I don't think you're listening to yourselves with some of the comments you've made about allowing the role of an independent member.

**Mr Morin:** To come back to the Speaker, and you have to be in the chair to understand and Noble will be there to support what I'm saying, there are so many ways that you can be crucified.

**Mr Hope:** That's what you get when you make those big bucks.

**Mr Morin:** To be put on the spot and to feel so alone, I wouldn't add on to his responsibilities, that's what I feel, to decide for instance should an independent member be on a certain committee. I believe in the good cooperation of the House leaders. We've gone through some periods where, yes, it's difficult but, at the same time, if it's straight common sense, to help an individual to go and debate an issue. What I'm saying is, put yourself in his boots, so that you have some rights but don't expect the same rights as everybody else. That's what I'm asking Peter, to make sure that the independent member has that protection.

1530

**Mr Owens:** In terms of what's a minimum standard of acceptance that we're looking at, maybe Mr Sola can respond to that. Let's get down to brass tacks here. What do people want?

**Mr Sola:** I think Gilles touched on it. This committee should be here to try to give independent members equal rights to what members of parties have, not special privileges. Therefore, if they have equal rights, they should have to go through the same process as people in parties.

For instance, at the beginning of every session, your whip passes out a paper and says, "State the committees you'd like to sit on in the order of preference, one, two, three." If it's the case as with me, I always got number 4, the one I never even chose, so why should it be different for an independent? If there are three independents, by coincidence they might all have the same three committees in the same order of preference. Well, then, because they don't have a House leader—they are each their own House leader—they would have to depend on the House leaders to allocate them in such a way that

they would sit on one committee, and they would have to be satisfied with that just as much as they are satisfied or dissatisfied with their allocation within the party system. You don't always get what you want.

The fact that you're an independent would probably mean you'd have to have more initiative. In a party system, you'd give the paper back to your whip or your House leader and he or she does all the work for you. Now, in this instance, I don't know what the process would be like, whether they would give it to the government House leader or to the Speaker, but whatever it is, we set up the process, he or she gives his order of preference to the person designated to receive it and then he or she is satisfied with the allocation of committee.

If a special circumstance arises where a certain committee is hearing a topic of interest to the member, either because of a matter of principle or because it directly affects his or her riding, well then, just as in the party system where party members will come and say, "Can I sub in for anybody on the committee sitting hearing such and such a topic," if there's an independent member on that committee, maybe he or she could switch with them. Otherwise, maybe special accommodation could be made.

I don't think we should be setting up a set of privileges for independent members; just a set of equal rights so that they can have the same fair chance of being on any committee as anybody who belongs to a party.

**Mr Sterling:** We're going around here in circles and circles and circles. I want to make a motion that we include the following in our report of this committee:

I move that we recommend that we change standing order 110(a) of the standing orders, which reads, "No standing or select committee shall consist of more than 11 members and the membership of such committees shall be in proportion to the representation of the recognized parties in the House,"

To a new 110(a), which would read, "The membership of a standing or select committee shall be in proportion to the representation of the recognized parties, and take into account the presence of independent members."

Further, I would recommend that we include in section 110 a clause (b) which would say:

"There shall be no substitutions for an independent member."

My submission to you, Mr. Chairman, is that that would allow participation of independent members in our committee structure, that it would be done through some negotiation with the House leaders of the existing parties in the Legislature, and that it would allow our House leaders the flexibility of adjusting numbers that are in accordance with the necessities of the various proportion of membership in our Legislative Assembly

at any time, either in our present circumstance or in the future.

It would allow an independent member like Mr Sola to go to the House leaders and say, "I would like to sit on the whatever committee." The House leaders, in my view, would have to react to him. If this was in the standing orders, they would have to say, "Well, you can either sit on this committee or we may have to offer you another one because there's already another independent on that committee," and they would have to negotiate that out. I'm sure that those negotiations would be done in good faith by at least the three House leaders in our present situation. Perhaps the party the independent has left would not be as willing, but I would think they would all be willing because, quite frankly, adding one member, in the case of our present structure, would necessitate at least the addition of two members because the independent would go on it and the government would also have to have another member as well.

I think, quite frankly, they would basically give an independent member the choice. I think House leaders would not be so kind as to say to an independent member, "You can change on a week-by-week basis and there's going to be a motion in the House each time you want to change." As you know, at the end of most sessions before we go into our summer recess or the winter recess, there's quite a change in the membership of our committees and I don't think it would be out of line for an independent member, at that point in time, to approach those House leaders if he or she wanted to go on another committee, wherever that would be.

I don't think we have to change that much in order to to accommodate independent members in committee. I suggest that, to me, would be the easiest way to do it and would give, I think, independent members the kind of access to committees that they would like to have.

**The Vice-Chair:** Do we have any debate on the motion?

**Mr Owens:** I don't know if the comment is germane or not, but probably not a lot of what has been said around the issue is germane to one comment or another. I think the issue of committees is one that requires examination as an issue unto itself. I think tinkering with the committee structure with the addition or the ability of an independent member doesn't particularly address the issue of committees itself.

I know that at some point in my life since coming here the Speaker had referred a request down to this particular group to take a look at committees and the functionality of the numbers. I'm not quite sure—I believe the number 11 is a fairly artificial number that was agreed to probably somewhere after September 6, 1990, to give representation the numbers.

I think, taking a look at the committee structure, we

clearly have to ask ourselves, in particularly this economic period, whether or not it's truly feasible to have the kind of show that we take out on the road to the tune of somewhere in the neighbourhood of I think 10,000 bucks a week or something like that to put a full committee on the road with per diems, staffing, accommodation and all the rest of the stuff.

I think there's a broader issue here in terms of committees and, again, in terms of tinkering with the process. I don't think it starts to solve the problem. I think the concerns about downsizing committee is something that we should take a look at, maybe having smaller committees, having committees that look at different areas of concern, which would, again, broaden the ability for members to participate and not perhaps be stuck on one or two or, I guess, in the case of the opposition members you probably have your committee duties more onerous simply because of the numbers within your caucus.

I'm not sure that I can necessarily support the motion as it stands because I don't think it addresses what I think is a fairly integral issue within how this place functions around committees.

**Mr Sterling:** Could I just respond to that, Mr Chairman. I had the sincere hope that we would be able to provide independent members in the Legislature in the fall some access—

**Mr Owens:** Can you speak up, Norm, we can't hear you over here.

**Mr Sterling:** I had sincerely hoped that we could come to some conclusions in this committee so that we could provide independent members with some hope of participation in the fall. To hold forth the notion that you're going to consider all these other dealings or issues involved with committees, as to whether they should be bigger or smaller, I think is a straw issue. I don't think it is has anything to do with the participation of independent members in committee.

1540

The fact of the matter is that our House leaders now have the opportunity within our standing orders as they are, 110(a), to reduce the size of committees if they so wish. That would not be determined by this committee or by anybody else. It's a maximum of 11. They can have committees with three people if they want to have them that way. That's the bottom line.

I just think it's incumbent upon this committee to come to some pretty clear conclusions, as they see the evidence and the rules of other places, to some kind of practical suggestions that can be put in place on September 27 when we return to the Legislature, so these people can participate and represent their constituents. I don't think you can say with any kind of credibility that we're going to put these issues off until we restudy the world in terms of standing orders. I just don't think



that's a valid argument at this time.

**Mrs MacKinnon:** With all due respect to all that's been said in regard to representation of the independent member on committees, I came to this particular committee for this particular proposal feeling that there was more than committee work involved here for the independent member. If we go through the honourable Mr Morin's presentation, there are a lot of things involved here other than committee. Correct me if I'm wrong, but it seems to me that we're speaking about the right to vote, the right to debate, the right to participate in question period. I'm having a problem figuring out if we can deal with it.

**Mr Sterling:** I think the only way we can deal with them is to deal with them one by one.

**Mrs MacKinnon:** I was just going to say, can we really deal with it in one fell swoop? Do we start with committees? In other words, are we getting the cart before the horse? There comes the farmer again. Don't grin at me like that.

**Mr Sterling:** We were discussing committees this afternoon, so I thought, well, let's deal with the thing we're talking about and not continue to go around in circles and try to come to some kind of conclusion. If somebody's got a better idea, I'm quite willing to listen to it.

**Mrs MacKinnon:** I don't mean any disrespect. Please don't get me wrong.

**Mr Sterling:** No, I'm not talking about that, Ellen. But I think that we have to deal, one by one, with how we're going to include these people by changing the rules.

**Mrs MacKinnon:** I can agree on that, yes.

**Ms Zanana L. Akande (St Andrew-St Patrick):** Could we have a copy of the motion that was presented?

**The Vice-Chair:** Yes. I would ask that we have it photocopied so members could see it. I think it's fair we should all have a copy of the motion.

**Mr Sterling:** Perhaps we could defer the discussion of this and move to another matter and try to find some resolution.

**The Vice-Chair:** Okay, are we agreed that we can defer discussion on the motion? Is that agreed? Agreed. Good.

**Mr Ramsay:** The independent member just voted in here. Is that right?

**Mrs MacKinnon:** Mr Chair, I didn't mean to throw anybody off track.

**The Vice-Chair:** Do you wish to proceed to another matter?

**Ms Akande:** Yes.

**The Vice-Chair:** Mr Sterling, do you have anything else you wish to raise?

**Mr Sterling:** The other ones that we have to deal with are the rights in question period and in members' statements. I don't know how Mr Sola feels about responses to ministerial statements. I have viewed the five-minute response to ministerial statements as a party function rather than as an individual function, and my position would be that individual members would not have the right, as backbenchers on the government side do not have the right, to respond to ministerial statements. I believe that's a party function, as are the ministerial statements. Does anybody disagree with this?

**The Vice-Chair:** Does anybody disagree with that?

**Mr Sola:** I would just add a proviso. I agree with that except in certain circumstances. For instance, if I were representing Bruce and the reduction of hydro came up and would devastate my community, I think I would want to get up and respond to that ministerial statement. I guess maybe it could be done on unanimous consent, but normally I agree that responding to ministerial statements is a party function and independents represent only themselves. That would be the only circumstance I could see. That's fine.

**Mr Sterling:** I just say to Mr Sola that I think that kind of situation would arise so infrequently that I don't think you should really contemplate it in the standing orders. I think you should hope that the House of the day would recognize that and that there would be some kind of accommodation. I think there would be, quite frankly, from our groups—

**Mr Owens:** I think it's very rarely that unanimous consent is withheld in terms of responses. People have stood up and made statements. You made a stunning statement about the Ottawa Senators or something—

**Mr Villeneuve:** That they were smoking in the dressing rooms.

**The Vice-Chair:** Yes, we could always use points of order to get on.

**Mr Sterling:** Okay, so that's agreed upon.

**The Vice-Chair:** Yes, that's agreed upon, that is not to be changed.

**Mr Sterling:** On unanimous consent, my preference would be to up that to two, but I hear other members saying that they would rather that not be touched, that an independent member—how do you feel on that, that it should just remain as it is?

**Ms Akande:** I feel that unanimous consent should remain exactly as it is. My point yesterday was that to deny it is to deny the existence of the member and his or her constituents.

**Mr Villeneuve:** I think that's one we can possibly leave in limbo, leave it that way now until we see that it's not working. I think this committee can be reconvened. I think we may have to look at legislative consensus, which would be a consensus with maybe two or three exceptions, and at that point we could go from

there. I think we have a back door here if the Legislature stops working because of a person who has decided to hijack the place.

**The Vice-Chair:** Right. So I gather we have consensus that there'll be no change with respect to the rules concerning unanimous consent? Okay.

**Mr Sterling:** The other one, I guess, and I'm looking at Peter's response, is the right in private members' hour. First of all, I believe that an independent member should have the right to be involved in the ballot and have his or her item as a matter of discussion once a year, or whatever time frame that is. I don't think anybody objects to that.

**The Vice-Chair:** No, I don't think so.

**Mr Sterling:** I guess the difficult part comes on how the independent member gets involved in the debate, because, as you know, the standing orders divide up the debate in a party fashion. I would favour some kind of discretion on the part of the Speaker to allow an extension of the time—

**Mr Villeneuve:** Five minutes, 15 minutes.

**Mr Morin:** Nobody last 30 minutes, so five minutes.  
1550

**Mr Sterling:** If you want to put a time frame, I don't mind putting a time frame. I would trust the Speaker to allocate the time as he saw fit. But I can't imagine the Speaker wanting to drag the private members' hour into 12:30 or whatever. It would depend. For instance, if somebody had brought up a non-smoking matter and I was an independent member had been very much involved in that issue, I think that a Speaker might say to me: "Because this member has had such an interest in it, five minutes may not be enough. We'll give 10 minutes," or whatever. So I hate to cut him down. I trust the Speaker enough that he's not going to—

**Mr Hope:** No, you don't. You don't trust him for the committee stuff. Why would you trust him for allowing the 10 minutes? It doesn't make sense, Norm.

**The Vice-Chair:** Mr Sterling, perhaps we could ask a question here: Under our existing system and under our rules, could the Speaker use his discretion to allow an independent member to participate in private—

**Mr Morin:** It states very clearly that the debate must last 30 minutes: 10 minutes for introduction and after that the time is divided equally among all the parties. I think it will need a change in the procedure itself. That's not that difficult. Perhaps, as Norm said, it should be left it up to the discretion of the Speaker to include an independent member. But should the independent member speak at every debate? If this is the case, it should always be 25 minutes.

**Mr Villeneuve:** The problem I have there is that if there are three independent members and all three want to speak at every debate, then we're looking at half an

hour more, and that's the problem.

**Mr Sola:** Then they would have more privileges than the party members.

**Mr Sterling:** I don't think the Speaker is going to do that. I don't think a Speaker worth his salt is going to say, in terms of dealing with the length of time of speaking, that—one of the weaknesses of our standing orders is that we give such a small amount of discretion to the Speaker on how the House runs and the heat or the energy of the House or feeling of the debate. Sometimes I have always have felt that our standing orders don't give him that opportunity to deal with it in the most reasonable fashion sometimes. He has to ask for unanimous consent in order to do some things. Normally he gets it or whatever. So I'd like to get a feeling on what people feel is reasonable. Do you want it discretionary or do you want a time frame?

**Ms Akande:** I think discretion would be fine. I don't think anyone's going to be unreasonable about it. Let's face it: We're on television. We look like idiots—I don't care what anyone says—in chopping off someone's inclusion. The message that goes out there is really going to be negative. So I can't anticipate that any Speaker would not be reasonable.

**Mr Owens:** Just in terms of some pragmatic questions, I don't have a difficulty with this at all. A private member is a private member is a private member. I guess I would like to have an understanding of what kind of notification the Speaker would require. Would quorum then be an issue as well if you were putting a time on at the end of a session or the end of private members' hour and there fewer than 20 people remain in the House? Would that be deemed as loss of quorum for the purposes of the rest of the legislative day? Would it be deemed loss of quorum for the purpose of private members' hour? The procedural questions I'd have to have an understanding of as well.

**Mr Sterling:** I think you're trying to anticipate too many problems.

**Mr Owens:** Listen, Norm: We've already had one example of loss of quorum during private members' hour, so it's an issue that has occurred during the life—

**Mr Morin:** You remember that?

**Mr Owens:** Exactly, and my name, the member for Scarborough Centre, is in the Hansard as being in attendance, by the way. But I'll tell you that in terms of these kinds of issues, yes, there needs to be an anticipation, because I don't want to have Monsieur Morin as a Speaker on Thursday morning and Mr Sola, for instance, as an independent who has been granted time and there is not quorum in the House and then all of a sudden we've lost quorum for the day. No, that's a procedural issue that I need to have an understanding of.

**Mr Sterling:** You'd lose the quorum for the day. You'd have to keep your guard up on the government



side to have a quorum till 10 after 12 instead—

**Mr Owens:** Unless we're all going to agree we're going to be jolly good fellows and say that it doesn't count.

**Mr Sterling:** I don't think you go into changing your quorum rules in order to deal with allowing the discretion of the Speaker to allow somebody to speak for five minutes. I think that you're getting into trying to provide for every contingency in the world.

**Mr Owens:** I'm a socialist, though. That's what makes a socialist.

**Mr Sterling:** I know.

**Ms Akande:** Would it be safer to have that included?

**Mr Owens:** Ramsay used to do that too.

**The Vice-Chair:** Mr Hope.

**Mr Hope:** I listened to the comments that were being made and I guess it puzzles me a bit. Noble brought it up very clearly: Let's deal with the independents on a non-singular; let's deal with the independent on a plural aspect, which we currently have in our Legislature today, independents on a plural. Everybody seems to be missing that and that's why I raise the question.

The other stuff—now you want to entrust the Speaker and before you didn't. I guess that's worth questioning. But I just say, what do you do when is more than one independent member who wishes to participate? What's the time allocation? How long does the House go beyond 12 of the clock? When does the debate occur? Does the debate occur during the debate process and then after the vote or do you wait till just before the vote to allow that independent to participate?

I think we have to look at the plural aspect. If we were looking at everything as a singular, it would be very easy. But we have to give consideration to more than one individual who chooses, which is a current situation in our House today. We have to accommodate because we're not talking about one individual now. You're talking about possibly three individuals whom you are going to have to accommodate.

**Mr Sterling:** So what's the solution, though?

**Mr Hope:** I gave some, Norm; you don't agree with them.

**Mr Ramsay:** I would suggest that the solution for this might be to include in the standing orders to give some discretion, but also with some guidance to the Speaker, some sort of statement such as: "From time to time, the Speaker shall"—

**The Vice-Chair:** May.

**Mr Ramsay:** I guess "may," but I'm saying from time to time—"from time to time shall or may accommodate the inclusion of an independent member into the private members' bill discussion."

**Mr Villeneuve:** To a maximum of?

**Mr Ramsay:** To a maximum of five minutes.

**Mr Hope:** So that could be possibly 15 minutes in total?

**Mr Ramsay:** No—"of a member." I've done it that way and you're allowing some discretion. Then "not to exceed in total," if you want, 10 or 15 minutes. I've included the language and I haven't put it in this, that it would actually only mean the inclusion of one independent member per private members' morning or bill debate, I guess. Maybe there's a possibility of two, but I think it should be one per bill or motion on Thursday morning.

*Interjection.*

**Mr Ramsay:** I don't think so but I guess this maybe just satisfies Randy's—

**Mr Villeneuve:** I think that makes sense.

**Mr Ramsay:** Why doesn't that do it, Randy? You did shake your head at that.

**The Vice-Chair:** Mr Hope, do you have any comment?

**Mr Hope:** Yes. I'm shaking my head because I'm still stuck on the committee and now we want to give the Speaker an opportunity for decision when we wouldn't give the Speaker—

**Mr Ramsay:** The committee has nothing to do with the Speaker, that's why.

**Mr Hope:** Well, it does, because there has to be a gatekeeper somewhere in this process for an independent member. You can't depend on the three political parties to be the gatekeepers for an independent when you're talking about—

**Mr Ramsay:** You're going back now.

**Mr Hope:** I'm taking the whole thing in context; I have to when I listen to Mr Morin's comments. He did put them very clearly. I've kept a copy of them and I have them sitting right in front of me. When we're talking about the right to introduce a bill, that's easy: He just goes in to the Rolodex and away we go; if his number comes up, he can introduce a bill. It's the participation in the debate, and now I'm looking beyond one member. I'm looking at the multiple members who might be out there who are independents. How can you participate in a debate and keep—

**Mr Ramsay:** Well, I just gave a suggestion of how.  
1600

**Mr Hope:** But keeping in mind that there are other members. Remember now I have to refer back to my rights as a normal member who wishes to participate in the debate, but unfortunately I can't because time is just not there. I'm just shaking my head because I don't feel comfortable with what's being said of creating the balance between allowing the independents the right to participate and also not to allow more rights than a

party member who is now sitting in that House, and trying to balance those two out. That's why I was shaking my head. It just doesn't seem to be a balancing act between—

**Mr Ramsay:** Mine was too open-ended in possibly extending too much power, you're saying now, to the independent.

**Mr Hope:** Yes, it could be just too much. I'm trying to find a comfort level. Listen, if I'm going to be voting on stuff I have to find a comfort level.

**Mr Ramsay:** Would you want to restrict it to how many motions or bills a private member can speak to during a year or a session or something? Do you want a cap?

**Mr Hope:** I was trying to see if there is stuff in here, but one of the comments that Mr Morin got me with was that he's not stuck to the status quo in the comments. Then I said, why am I looking here? Should I be looking at something unique instead of staying with the status quo? There's nothing that I see in here that allows the participation in private members' debate. I don't know if it was just an oversight, if they even have it in this stuff. I'm just trying to find a comfort level to balance between the member of an identified party and the independents.

**Mr Ramsay:** So you want inclusion but with some sort of limitation.

**Mr Hope:** Yes. They should have a right to participate in the debate, but what's the balancing act?

**Mr Ramsay:** Okay. Do you have a suggestion for the limitation then?

**Mr Hope:** That's why I was seeing if there's other stuff that might have been missed in here.

**The Vice-Chair:** Mr Hope, I think you're asking legislative counsel if—

**Mr Hope:** Did we get everything that's here?

**The Vice-Chair:** Do other jurisdictions have private members' hour, and if so, is there any guidance that can be given with respect to treating independent members fairly with members of recognized political parties?

**Mr Sibenik:** Mr Chair, in response to the question, I did receive correspondence from all the other jurisdictions in Canada, but none addressing that specific point, unfortunately. It just tends to say that there shall be discretion in allowing independent members to participate in various aspects of the procedure. Sometimes my correspondent will say that the Speaker will exercise some discretion in allowing independent members certain rights and in other cases these rights are spelled out, but it doesn't really come to the question of private members' hour. That specific point wasn't addressed in the responses that I got from the other jurisdictions.

I can go back and find out the exact situation, even if it's sort of an unwritten rule that they have around

there, an unwritten practice, and find out what the situation is there. That might be of some guidance.

**Mr Hope:** While you're finding this stuff out, we should also be asking the pros and cons of situations. I'm reading rules of other jurisdictions, but you don't give me a whole picture; you never tell me the pros and the cons of a situation. Somebody might have a rule sitting there, but if we were to talk to them, they'd probably tell us the rule stinks. We could be falling into somebody else's trap and we don't have that balancing act of whether the rule is good or not. I know we talk about number 122 dealing with the composition of committees; you've said the rule is there and it does allow, but nobody has asked for the pros and cons of that rule. If we're going to fall into somebody else's trap or follow somebody else's legislation, I want to make sure it's good, that I'm not picking up somebody else's problem.

**The Vice-Chair:** Mr Owens or Ms Akande?

**Mr Owens:** We have an intracaucus disagreement.

**Mr Ramsay:** I say to Mr Hope that I don't think, as Mr Sterling has said, this should be as complicated as we're making it out to be. This is not something that, once decided upon, as far as recommendations that may be agreed upon by the House, cannot be changed again tomorrow if we find that a private member is now abusing, say, the right that we would establish through this discussion that an independent member could partake in a private members' session.

All we've got to do is take a stab at it to enlarge the rights of independent members, and if we see some abuse or whatever, we can be back here in a couple of weeks and say, "This hasn't worked; we need to refine this rule today."

**Ms Akande:** The Lord giveth and the Lord taketh away.

**Mr Villeneuve:** Where is the Lord when we need him?

**The Vice-Chair:** As Chair, could I make some suggestions here? I think we're having some difficulties. My suggestion is that we should ask legislative research for just a draft motion so we have something in front of us with respect to this issue of private members. I hope I'm not overstepping myself, but he might want to provide a couple of options. I think one of the options, clearly, that's been set out is to make it vague at the discretion of the Speaker to accommodate in private members' hours a fair, shall we say, participation in private members' debate.

**Mr Morin:** That sounds very good the way you said it.

**The Vice-Chair:** If that's agreeable, I would suggest that we ask. I don't think we should vote on anything today; I think we should just give some instructions and come back.



**Mr Ramsay:** Could I just make a suggestion to legislative research that maybe the inclusion be capped in a way to accommodate the inclusion of one independent member per one private member's ballot item or resolution to a maximum of five minutes. Only one person would be in there and the maximum speech would be five minutes, so there is some capping there.

**The Vice-Chair:** Okay. I have no objection to that.

Do we wish to continue? I would suggest we continue the process. If we do continue, we will give instructions to legislative research to come back with drafts for us to look at.

**Mr Sterling:** What other issues do we have to deal with? We have to deal with debate on a government bill.

**The Vice-Chair:** They have that right now, the discretion.

**Mr Villeneuve:** Then there's time allocation that's a problem. That's the only other one I can think of.

**The Vice-Chair:** The Speaker has the discretion to recognize, doesn't he, right now? Mr Morin, if I might ask you, presently in debate on legislation, if an independent member wishes to participate in the debate, you have the discretion to recognize him, right?

**Mr Morin:** That's what we have observed. This is what we've respected so far. Sometimes certain members didn't like it, but the Speaker had to be firm and say, "Yes, it is his turn," in rotation, so you try to be fair. Let's say for instance just on the introduction of bills—there are always so many—what I try to do, and Noble does the same thing too, is to recognize an independent member when we feel it is the right time. As Norm said, you have to judge the mood of the House. In a debate it's the same thing, but in a debate you should never refuse a person to debate.

**Mr Hope:** Don't the rules clearly state that you go in rotation? Rotation doesn't necessarily mean by identified party.

**Mr Morin:** It does. You see, Randy, there was an understanding with the Speaker and the House leaders that he would recognize them at his discretion, and the House leaders accepted that.

**Mr Hope:** Do the rules currently, as printed today, stop you from even recognizing them? All it says is that you go in rotation, but does rotation mean by identified party?

**Mr Villeneuve:** The only way you can stop that is to get up on a point of order and ask the Speaker for unanimous consent to have this independent speak. If you do that and if you don't get unanimous consent, the way the rules are now, the guy doesn't speak.

**Mr Morin:** That's right, and you wouldn't do that.

**The Vice-Chair:** If I could take my prerogative as Chair here to suggest that since that is the way it's

presently working, we ask legislative research to draft a rule change to accommodate the present situation, the House leaders' agreement.

**Mr Villeneuve:** The one area of concern, when it's under time allocation, is the agreement of the three House leaders that the time be evenly split with the three parties presently in the House. The independent members are locked out.

**The Vice-Chair:** I understand that.

**Mr Owens:** Again, Noble comes to the point of the ability of the government to get its agenda accomplished. We raise the spectre again in terms of the kinds of rights that we want to have recognized for the independent member. I'm not sure I could agree to anything that would take away from the ability to have that three-party agreement. I think that's usually, or most widely, utilized as we move towards the end of the session to get through the business.

1610

I don't have a difficulty in terms of the previous remarks with regard to Gilles recognizing, whether it's Mr Sola or Mr Drainville of past tense, if he wanted to speak, but again, I think there's still that line that I have to be cognizant of in terms of my ability as a government member to get my agenda through. In terms of the ability for the government to operate, I'm concerned that if we start again allowing the independent member to have equal to rights of a member within an organized party, we're going to run into some difficulties around that kind of issue.

**Mr Morin:** There's also a role, I think, that the independent member will have to play: that he keeps in very close contact with the House leaders at all times, that he gets to know them. If the person is reasonable, if the person is not nasty or malicious, I'm sure that the House leaders will be there to accommodate.

I think Norm mentioned, when you deal with an independent member, if two House leaders agree, then that should be the ruling; instead of unanimous consent, if two agree. So it could be one government member with one of the official opposition or vice versa. That could be one rule.

Understand me, because a lot of things that we're saying now, the things that we're discussing now, will have to be left to discretion. You cannot write everything down. You can't. And if the independent member also shows cooperation with the House leaders and he has an issue which is really of concern to him and if there is some time—look how difficult it is as a backbencher within your own caucus to have the floor.

**Mr Sola:** Tell me about it.

**Mr Morin:** I think if the independent member keeps a good relationship with the House leaders and comes to them when it is necessary, when there is an emergency, the House will understand. Maybe I'm naïve to

see it that way, but I think—

**Mr Owens:** I don't think it's naïveté at all. I guess in watching the House over the last two years and moving into the session, I just have some real concerns about the ability of the government to get its agenda through, and not for want of talent or energy on the side of the government but in terms of the kinds of procedural things that as an opposition you're certainly entitled to exercise. We certainly probably taught you a few tricks in that respect as well, but in terms of putting yet another opportunity to—maybe I'm looking at it from a different perspective. You're seeing it as an opportunity to participate. I'm looking at it as a potential as a block at 11:45 pm the night we're adjourning before Christmas and we have family support legislation, for instance, that's critical to provide money for moms and their children and some individual gets up and stalls and that legislation is not able to go through.

I have a real concern about that. I think we've seen some fairly interesting examples of stall tactics, and while on one hand I say fine, I don't have a problem with participation, I think that there has to be some kind of a—I don't know whether it's a limitation or some type of way that the member is not totally unfettered in the way he or she can conduct themselves in the debate.

**Mr Morin:** Is there a way, Peter—is it my turn? Sorry.

**Mr Ramsay:** This is my colleague again, Mr Chair. Is there any way to get disciplinary action?

**Mr Owens:** Mr Morin is the dean of the Legislature. Come on.

**Mr Morin:** No, no.

**Mr Ramsay:** To be consistent with my last suggestion, and it takes in Mr Hope's concern about freedom balanced with some sort of cap, I would suggest that, in whatever language the legislative researcher wants to use to describe the situation, but we're talking about a situation where there's so much time remaining in a debate, whether it's through time allocation that has been forced through a time allocation bill or just an all-party agreement and the time will be divided equally between all the parties, again, accommodation shall be made or may be made for the inclusion of one independent speaker to a maximum of 10 minutes as part of that time, the time to be divided after that equally between all three parties. Something like that that would spell that out would give the opportunity for one inclusion per debate where there's time allocation.

**The Vice-Chair:** It wouldn't affect the total time allocation; it would only take away from all three parties.

**Mr Ramsay:** That's right.

**The Vice-Chair:** I don't think that would be any problem for Mr Owens. I think it would accommodate.

**Mr Owens:** Sorry, I missed your point.

**The Vice-Chair:** I think Mr Ramsay indicated that it would not in any way extend the time allocation, the participation of an independent member. It would come off all three parties' times.

**Mr Owens:** I hear what you're saying. I'd like to see how it plays out in terms of written—

*Interjections.*

**The Vice-Chair:** Mr Morin?

**Mr Morin:** Are you through, Mr Ramsay?

**Mr Ramsay:** Yes. I could allow Mr Morin to speak now.

**Mr Morin:** Is there a way, Peter, that we can establish, let's say, new procedures without implementing them immediately? We bring them in and then we reassess them in five or six months and we fine-tune them if they don't work properly. Is that possible?

**Mr Sibenik:** Are we talking about provisional standing orders?

**Mr Morin:** Yes.

**The Vice-Chair:** With House leaders' agreement maybe.

**Mr Morin:** You know, we would try them out—

**Mr Sterling:** We've done that.

**Mr Morin:** We've done that many times, that's right. We can try them out. If they don't work, we come back and fine-tune them so that they work properly, and then we include them.

**Mr Owens:** I think, though, Gilles, again the problem I face as a member of the committee and also as the chairman of caucus is that in order to do something like that I'm going to have to go back to my caucus, along with my colleagues on the committee, and sell this, as you or Dave or Carman will have to do for your caucus and Norm and Noble will have to do for theirs, and I guess John can talk to himself.

**Mr McClelland:** You should hear the arguments between John and John.

**Mr Owens:** There's no arguments, I'm sure, at your meetings. But this is a political reality in that we may be thinking that we're establishing a new standard of libertarian thought, but I think that in terms of what I have to do to do my politics and my political reality is that I'm going to have to take this back to my caucus before I can agree to any kind of implementation strategy. I think it's only fair that I put my cards on the table here.

**Mr Villeneuve:** We thought you had all kinds of power, Steve.

**Mr Hope:** Yes, but I'm on this side and he's got go by me in order to get it approved by my caucus.

**The Vice-Chair:** Thank you, Mr Owens. There may be debates on whether we pass these motions, but I think we're proceeding in the correct way to get down



a number of motions for consideration.

Any further discussion on this aspect?

**Mr Sterling:** I think the discretion of the Speaker in allowing the participation of independent members should be tempered by including some kind of words which indicate that the independent members are allowed to participate somewhat in proportion to the representation in the House so that the Speaker is not faced when exercising the discretion with one constantly harping independent member of four or whatever it is wanting to be involved in this non-confidence motion debate and taking time away from the parties, and then he wants to be involved in the next debate the next day. He's constantly at the Speaker to exercise his discretion and he only wants five minutes or whatever it is, and then some of the other members, particularly on the government backbench side, who have had their whip and their House leader say, "Look, you can't speak today because we want to get this bill done," and some of the backbench members reluctantly agree and then they see this independent guy get up day after day and whack away.

1620

What I think should be put in is some measure or some way giving the Speaker the excuse to say to an independent member who wants to participate in every debate: "No, you have to be cognizant of all of the other members in this Legislature. It has to be somewhat in relation to the fact that you're one 130th of this organization." I don't know how you'd do that, Peter. I don't know whether it is in any standing orders.

**Mr Sibenik:** Nothing that I've ever seen. If the committee wishes me to make a stab at such—

**Mr Sterling:** I'd like to see what you can—

**Mr Villeneuve:** It would protect the Speakers. I think what Norm touches on is very important.

**Mr Sterling:** I think it also would say to an independent member that when he was going to make a speech or a request, that it wasn't just sort of off the top of his head but said, "I'm really concerned about this topic or this area." And then I think everybody would treat the request with a lot more respect as well, so they'd be forced to focus on the fact that if they got up this week and talked about the employment equity bill, it may be a couple of weeks before they have the opportunity to speak again. So they might say, "Well, I'll not enter into this debate but I'll save it for the casino debate coming up, or whatever, which I feel much more strongly on." I'd like to see if you can develop some kind of fudge words for the exercise of the discretion of the Speaker.

**Ms Akande:** It would seem to me that would be part of the discretion of the Speaker. I understand what you're saying in terms of concern. For me, and I must say as an individual, that concern is not as great, though

I recognize why it's there and I recognize that it's there. I would think that if in fact someone has decided to give over that right to make decisions to a party by running or being a part of a party, then of course you have to play according to the party's decisions and rules.

I think this whole discussion, of which I'm so happy to be a part, and consideration about the independent member is going to lead to, hopefully, a whole other discussion about the individual member, period, and where priorities should be and shouldn't be. I'm not as certain as perhaps some of you are—I don't know—that tradition will hold or that they'll have the support of the populace generally that tradition should hold.

At any rate, that's not what we're discussing at the moment. What I really did ask to speak to say is that I really do think the discretion of the Speaker is an important issue around here, and the reasonable attitude or approach of the independent members in recognizing that the attempt to give them as wide a berth as possible but yet within the framework of a team sport, hopefully soon to become other.

The other thing, though, that we have to recognize is that I think it's extremely important for us to be looking at this in the framework of yes, we will come back and fine-tune, we will see how it operates, and then we will discuss it again. I think that will give other members—because I know some of us are very anxious to have something to start the new term with, or soon after—a sense of, oh, yes, this is okay because we're really just trying to see how it operates, and then if it doesn't operate in the way that we think is appropriate, we can all get back together again and change it.

I think that way of presenting it and that kind of discussion with the caucuses will in fact help us to implement something more quickly, recognizing that it isn't written in stone.

I wanted to say one last thing very briefly, and that is that part of the monitoring of this person's approach, behaviour, as well as ours, will be done by the public. I'm sincere in my belief that they will not be too swayed by the notion of it being excessive to contribute the finances of one other person being on a committee if in fact it provides for the views of constituents. At least I would hope that that's what they would feel.

**Mr Hope:** I've had the opportunity to read the rules dealing with rules of debate, and nowhere does it mention "party." It talks about, "Every member desiring to speak must rise in his or her place and address the Speaker, in either English or French."

"When two or more members rise to speak, the Speaker shall call upon the member who, in the Speaker's opinion, rose first in his or her place."

I don't see anything where it already restricts the member. If we look at all the documentation that we

have before us, it refers to where it used to be "party" they've now put "member," so it allows the independent to participate.

**Interjection:** In rotation.

**Mr Hope:** It doesn't even say "rotation." I haven't seen the word "rotation."

**Mr Villeneuve:** Step out of line and see how fast somebody snaps you back.

**Mr Hope:** But I just ask: Have I missed something?

**The Vice-Chair:** No, you haven't missed something. I think legislative research could answer, and the answer they're likely to give is that we're talking about practice here. You're quite right: We'd be making a recommendation on practice rather than a recommendation with respect to a rule change, because the rules just do not—

**Mr Hope:** The rules currently do provide for a private member to participate in a government debate. That is there and I haven't seen anything—I was

looking under "opposition day" whether it permits, but I believe it restricts the participation in that part. But I'm looking here and listening to the arguments are going on, and I guess what we have to do is start following the rules where it says that whoever rises first in their position, in the opinion of the Speaker, is identified and has a right to speak. This is the way it is. The rules are there. The only question I have is if it's opportunity to participate.

**The Vice-Chair:** Mr Hope, I'm just thinking we've had a long afternoon and maybe we're all getting a little tired.

**Mrs MacKinnon:** Do you want a motion, Mr Chair?

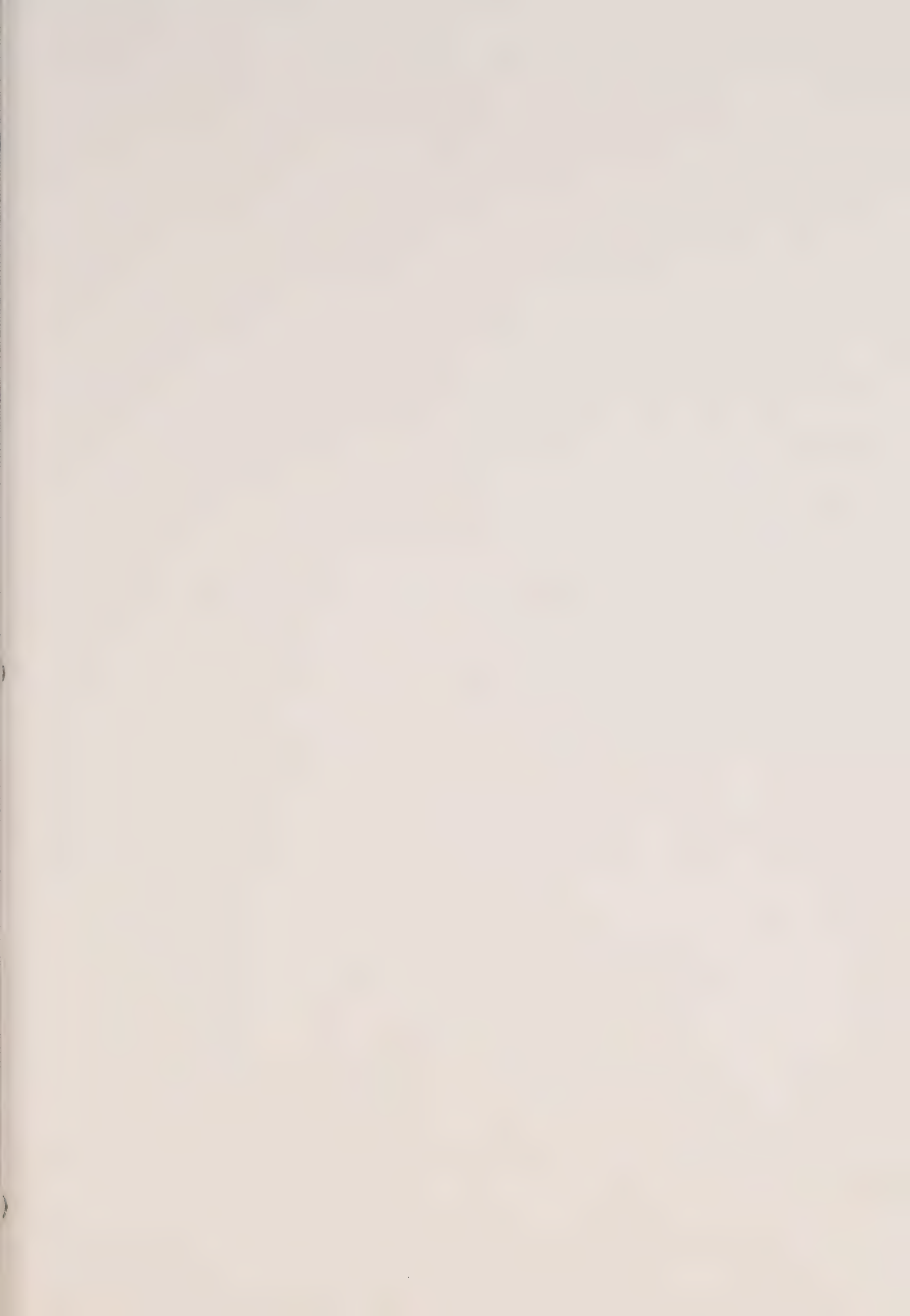
**The Vice-Chair:** Yes.

**Mrs MacKinnon:** I move to adjourn.

**The Vice-Chair:** Okay, thank you.

The committee adjourned at 1628.











## CONTENTS

Wednesday 15 September 1993

<b>Role of the independent member</b> .....	M-55
Peter Sibenik, procedural research clerk, committees branch, Office of the Clerk	

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

**Chair / Président:** Hansen, Ron (Lincoln ND)

\***Vice-Chair / Vice-Président:** Wessinger, Paul (Simcoe Centre ND)

Johnson, Paul R. (Prince Edward-Lennox-South Hastings/PrinceEdward-Lennox-Hastings-Sud ND)

Farnan, Mike (Cambridge ND)

\*MacKinnon, Ellen (Lambton ND)

\*Mathysen, Irene (Middlesex ND)

\*McClelland, Carman (Brampton North/-Nord L)

\*Morin, Gilles E. (Carleton East/-Est L)

\*Owens, Stephen (Scarborough Centre ND)

\*Sterling, Norman W. (Carleton PC)

Sullivan, Barbara (Halton Centre L)

\*Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Akande, Zanana L. (St Andrew-St Patrick ND) for Mr Farnan

Hope, Randy R. (Chatham-Kent ND) for Mr Hansen

Jamison, Norm (Norfolk ND) for Mr Paul R. Johnson

Ramsay, David (Timiskaming L) for Mrs Sullivan

### **Also taking part / Autres participants et participantes:**

Sola, John (Mississauga East/-Est Ind)

**Clerk pro tem / Greffière par intérim:** Bryce, Donna



CA70N  
XC20  
-L20

Gouvernement  
Publication

M-7



M-7

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Intersession, 35th Parliament

## Assemblée législative de l'Ontario

Troisième intersession, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 16 September 1993

# Journal des débats (Hansard)

Jeudi 16 septembre 1993

**Standing committee on  
the Legislative Assembly**

**Comité permanent de  
l'Assemblée législative**

**Role of the independent member**

**Le rôle du député indépendant**



Chair: Ron Hansen  
Clerk: Lynn Mellor

Président : Ron Hansen  
Greffière : Lynn Mellor



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



# LEGISLATIVE ASSEMBLY OF ONTARIO

M-77

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Thursday 16 September 1993

The committee met at 1026 in the Humber Room, Macdonald Block, Toronto.

### ROLE OF THE INDEPENDENT MEMBER

**The Vice-Chair (Mr Paul Wessenger):** We'll call the meeting to order. What I was going to suggest we do today is continue on discussion with any of the points that have not been discussed yet. After we finish the discussion on all the items that have been raised, then I think we ought to consider whether we should ask research to go back and prepare a summary for us to see where we go next.

Peter, I'll just ask you to indicate to the meeting the areas that have not yet been covered.

**Mr Peter Sibenik:** Thank you very much, Mr Chair. I believe the two principal areas that the committee has yet to consider are the areas of member statements and oral question period. They are proposal 2 in Mr Morin's proposals and they are indicated on the very first page of yesterday's agenda.

I believe there has been discussion on all of Mr Morin's other proposals and there may be some areas on the last two pages of the agenda that the committee may feel it wants to go over, although I suspect there has been some discussion, if brief, on each of those nine proposals that are listed there. However, I think the committee could very well proceed with oral questions and member statements as a starting point.

**The Vice-Chair:** Okay would someone like to start off comments with respect to this item? What were indicated as some of the possible approaches were more discretionary approach based on some guidelines, or a more definitive formula. I think those were the suggested two alternatives.

**Mr David Ramsay (Timiskaming):** We had lots of discussion yesterday as to somehow setting out in the rules to allow the discretion of the Speaker. I think in these areas that's maybe a wise course. As we spoke earlier, this is not something carved in stone for ever. If we can give an initial crack to this, we can always come back if it's not working. I think we could maybe lay out some guidelines on what we would like to see happen and how we would like to see the Speaker run the House. That would be maybe along the lines, I might suggest, that the Speaker give due consideration to the participation of independent members during members' statements and question period, and maybe just leave it as simple as that. Let the Speaker run the House and give that due and fair consideration to the independent member from time to time when he or she sees fit.

**Mr Norman W. Sterling (Carleton):** I think you

should just give the Speaker discretion to permit independent members to make oral statements in proportion to the independent's representation in the Legislature vis-à-vis other private members. So you'd be talking, in the present scenario, one out of 105. I prefer not to say once every four weeks or once every three weeks, again, because politics being what it is a member may in fact have a very good case for having two statements in one week. But we would hope that member then would not expect another statement for another three or four months maybe or whatever. I prefer to have something that's in the Speaker's discretion.

The only other thing is that I think, because the other parties would not be aware this was happening, because I would expect that the request would be made to the Speaker privately between the independent member and the Speaker, that the time for members' statements be extended by the 90 seconds required for that independent member to make the statement.

In terms of the question period, I don't think the question period should be extended, quite frankly. I think it's probably too long now. Actually, I've suggested on a number of occasions that it be cut down, but I've never won that argument. That should be done the same way; I don't know whether the proportion would be to the number of opposition members or the number of private members in the House. I'm not sure which is the correct ratio, and I don't think it really matters that much anyway. I just think there should be some proportional statement in there to give the Speaker some credibility when he says to the independent member, "No, you've been at me too often and I've got to answer to the other members of the House."

**Mr Norm Jamison (Norfolk):** I believe it should be left within the latitude of the Speaker also. I don't disagree with that. My concern at this point is that with the party system, backbenchers have limited abilities as it is to have an extraordinary amount of input compared to some other members, especially on the government side. It was evident in the past government, the one with 95 seats, that members sometimes didn't have as much input or time in the House as others, and in some cases it works that way in the present House.

My concern is that in trying to be as benevolent as we can be here, I certainly don't want rights that are given, whether that be out of discretion or otherwise, to exceed the ability in any case of members of designated parties to participate. If the outcome were to be that, I believe we'd do more harm than good. What's being said here today about the latitude of the Speaker to recognize, and with a sense of fair play, the ability of

independent members to participate and represent their constituents to the best of their abilities and to help them with that ability, to allow them some latitude within the House to do that, I don't have a real problem with that at all.

The only concern I do have is that in our drive here to be as fair as possible, we have to understand that we can't surpass the ability of members of individual parties at this point to participate and give rights that could go beyond the ability of those other members to participate.

**Mr Ramsay:** Following that, it might be—I know what Mr Sterling said—beneficial to have some sort of enabling language there that spells out that we want the Speaker to use his or her discretion in recognizing independent members and maybe using the language in a fair and proportional manner, or something like that; you're spelling out what you're talking about, that, right, you don't want the rights of the independent member to exceed, say, the struggle a backbencher has, whether in opposition or in government. Maybe that sort of language just might cover that, so it's really clear what we intend, that the independent member has as much right, but no more, than any other member in the House.

**The Vice-Chair:** Any other discussion?

**Mr Sterling:** I don't know whether members want to go on in this. I think we've gone around the horn about five times on each subject and, quite frankly, I've exhausted my arguments. The other thing is that I don't think we should take ourselves too seriously on this committee with regard to this whole matter, in that the recommendations we make are again going to be negotiated between House leaders. I think what's been put forward are relatively mild changes to the standing orders. Hopefully, they can be converted into language that can be interpreted in the standing orders to give meaning to—I think there's a pretty common intent around the table. I'm not hearing very many new ideas come up as we go along and I just don't want to prolong the discussion longer than necessary today.

I don't know whether—Peter, do you think you have enough direction now to write a report at this time?

**Mr Sibenik:** Is there a consensus, actually, on oral question period here and members' statements?

**Mr Sterling:** I think so.

**The Vice-Chair:** Could I maybe state what I think the consensus is to see if that's correct?

**Mr Stephen Owens (Scarborough Centre):** Can these ceiling tiles move?

**Mr John Sola (Mississauga East):** Not where you're sitting.

**The Vice-Chair:** It seems, first of all, that independent members should have their fair, proportionate number of questions and statements.

Second, there should be no additional time added to question period to accommodate the independent member.

Third, when an independent member makes a statement, 90 seconds should be added to the time for statements, so it doesn't detract from any of the—yes.

**Mr David Johnson (Don Mills):** Could I just ask a question? When you're talking about fair and proportionate, I guess nobody would argue with that. But proportionate: Is that excluding the leaders' questions, for example, as a guideline, and proportionate being based on the number of questions that everybody in the House would have, excluding the leaders' questions? Is that what you're thinking?

**Mr Ramsay:** That's what I meant.

**The Vice-Chair:** Excluding the leaders' questions, yes.

**Mr Ramsay:** Equal to any other backbencher.

**The Vice-Chair:** Equal to any other backbencher.

**Mr David Johnson:** Yes, that sounds great.

**The Vice-Chair:** We also should emphasize the discretionary aspect. It's the Speaker's discretion. These are guidelines to the Speaker to exercise his discretion.

**Mr Owens:** We're not suggesting these as rules changes.

**The Vice-Chair:** No, we're not discussing these as rule changes.

**Mr Ramsay:** We're giving guidance to the Speaker as to how we think it should be used.

1040

**Mr Sterling:** We have to have a rule change to extend the time for statements.

**The Vice-Chair:** Yes.

**Mr Ramsay:** If an independent member is recognized by the Speaker, the time would be deemed as being extra to the 15 minutes.

**Mr Owens:** The non-partisan, the statements, the private members' bill issues that we discussed yesterday don't trouble me at all in terms of an independent member. But when you get into question period, which is totally partisan—we talked about the theatrics and I quite agree with your theory of life around this place—that's where I start to have my difficulty. When you talk about proportional questions, proportional to what?

**The Vice-Chair:** To other backbenchers. I think that was the indication.

**Mr Owens:** But what the hell does that mean, with respect?

**The Vice-Chair:** It's at the discretion of the Speaker.

**Mr Ramsay:** It's a computation, in a sense, because it's answering the concern that was just expressed that we want to make sure, like Norm has said too, that



really an independent member doesn't abuse it, because you could get into some sort of rotation where a couple of independent members could be recognized on each rotation, and that's the type of thing we're wanting to prevent. It should only be in a fair and proportional manner to the opportunity the other back benchers have in the House to pose questions during question period. That's the sense that I feel the consensus is developing on.

**Mr Sterling:** I don't think you can spell these things out exactly.

**The Vice-Chair:** No.

**Mr Ramsay:** No. How can you say "every third Thursday"?

**Mr Owens:** No, that's not what I'm saying. When you talk about proportional to back bench, that's a very broad statement. What I don't understand is the numbers that we're talking about.

**Mr Sterling:** I don't think you can talk about numbers.

**Mr Ramsay:** That's right, you can't.

**Mr Sterling:** I think if a guy represents a very unusual riding—

**Mr Owens:** Can you imagine your colleague Turnbull being denied a question? I'm quite serious about this. This guy would go absolutely ballistic if he were denied a rotation as a result of a Speaker's ruling. Whether it's John or North, or whoever—wherever the hell North is sitting these days.

**Mr Ramsay:** That's what we're saying here; it's not in rotation. Rotation doesn't apply. That's why we're saying this. So if Turnbull was an independent member, that person understands that he doesn't have any more right. There's going to be no rotation going; after three parties, now an independent's going to get a shot. It's not going to be like that. That's why we want to spell it out a little bit, so the Speaker doesn't get the idea we're talking about, "Now you just rotate." That's four parties in the House; it's not.

**Mr David Johnson:** I guess if you wanted to do an exercise on it, you would take all the questions that backbenchers ask over a period of time in the session and then divide that by the number of backbenchers, and we're talking about all three parties, I presume.

**The Vice-Chair:** That's right, all three parties.

**Mr David Johnson:** Then that would give you sort of a guideline. I don't know what that would be, but that would give you kind of a guideline.

**Mr Sterling:** I don't think you want to be that accurate.

**The Vice-Chair:** No, I don't think we want to be. We want, I understand, to protect the Speaker, to give the Speaker some security in exercising—Mr Morin and Mr Villeneuve both indicated they wanted something

they could say to the independent member: "Look, you've had your fair share of questions."

**Mr Owens:** Maybe I'm obsessive-compulsive about this, but as a backbencher in an organized—

**Mr Ramsay:** You bring your problems here to the table, don't you, Steve?

**Mr Owens:** What can I say? I have to fly up north for treatment.

I guess my point is, as a member of an organized party, if I have a question that is pertinent and burning in my riding, what I would need to understand is at what point the Speaker is going to be asked to exercise his or her discretion on this. If I'm up there and I'm ready to go with my question and all of a sudden we're into a situation where the Speaker has been asked to exercise discretion, is that on a point of order? Is this something that's kind of organized into the process?

**Mr Ramsay:** I don't think we need to spell that out, but I would think if I was an independent member and something pretty traumatic happened in my riding, I would go to the Speaker in the morning and say, "Listen, the government's closed a college in my riding," or whatever it is, "and I really need to get on the record today and ask a question of this government." I think you'd give some advance notice, but you can't spell all that out. Custom will then develop, that's all, from this.

**Mr Owens:** I guess I'm interested in protecting the rights of myself as a member of a party.

**Mr Ramsay:** But we're saying "in a fair and proportional manner." That's why we've put these guidelines in there for the Speaker, so the Speaker won't abuse it and say, "Okay, I think it's going to be on a rotation basis," citing the independents as a fourth party and they'll get equal treatment. We want to prevent that. As Norm says, you can't spell it out too much more exactly than this.

**Mr Sterling:** You are not dealing with a huge problem here. You're dealing with three or four independent members, or whatever number, at this time. If we get a situation where we have 15 independent members after an election, or some quirk, whatever happened, then we'll have to revisit this thing.

**Mr Owens:** I don't think the number of the independents is really the issue that I'm trying to address.

**Mr Sterling:** Yes it is, because the issue only arises because of that.

**Mr Owens:** No, no. My question is around how your colleagues and my colleagues—

**Mr Randy R. Hope (Chatham-Kent):** One at a time. Hansard's having a difficult time.

**Mr Owens:** —and David's colleagues want to fiercely protect their opportunity to get up in the House, as members of the New Democratic Party or the Pro-

gressive Conservative Party or the Liberal Party, to make their points, to get their hits. That's my point. It doesn't matter whether there's 15 or one independent member; it's the issue of fierce protection of our territory. That's what it comes down to.

**Mr Sterling:** You have to give up a little territory, that's all.

**Mr Owens:** You're very magnanimous.

**Mr Sola:** I think what we're trying to do here is to give the independent member a foot in the door, so to speak, to be able to ask a question, which is an opportunity that is now not available to an independent member. I don't think we're trying to bestow extra privileges upon independent members.

As a matter of fact, I think we should maybe take this opportunity to use this committee as a vehicle to get the individual backbench member into the role that was actually conceived of originally, which has been usurped over time by the fact that the strictures of party discipline have sort of encroached on the individual member's ability to function in representing his or her riding.

I think all we should be trying to do is create a climate where, when the need arises, an independent member can get up to speak on behalf of his or her riding. We can't make any too defined a role here, because usually these things happen in such unexpected fashion that you have to react quickly. You won't be able to give a week or two weeks' notice, because something may happen in your riding where you have to react to that today. I think that is what you're trying to establish here, just the ability for an independent member to be able to represent his riding when the need arises.

**Mr Owens:** I'm trying to balance my partisanship and trying to tone it down, and I repeat that in terms of your ability, or any other independent's, to stand up during members' statements or private member's hour, I have absolutely no trouble with that at all. But I view question period as the time when opposition members, or government members, for that matter, have questions that directly affect their ridings.

Let's be frank here: This business is about you wanting my job. If that's the opportunity where you get to go after my job, then I want to protect my right to keep my job and to also address my issues with my party or my government or whatever the hell, or David's right as a member of the official opposition to go after my government.

**Mr Ramsay:** What do you suggest?

**Mr Owens:** Adjourning. But anyway—

**Mr Sterling:** What are you suggesting? How do you allow the independent member to ask a question? That's what we're trying to find.

**The Vice-Chair:** Mr Sterling, I'll recognize you now.

**Mr Sterling:** It's the question that Mr Ramsay had. I don't think you can deny that. Are you prepared to deny an independent member? I don't think you are.

**Mr Owens:** No. I think that David's suggestion about taking a look at the number of questions and things like that may be a bit too scientific.

**Mr Ramsay:** It wasn't my suggestion.

**Mr Owens:** David A, David B.

**Mr David Johnson:** David J.

**Mr Owens:** David J, that's a good one; DJ.

1050

**Mr Sola:** In direct response to that question about our role being trying to get into the role of government, I think for the parties that is correct, but I don't think it is reasonable to expect an independent member to be going after a government member's job, unless we have 70, or what is it, 66 independent members in the House and then they come to some sort of agreement on how they're going to govern. Independent members are trying to represent the riding in which they were elected, so the political ramifications of going after somebody's job or the political playacting does not play as great a role when an independent member poses a question as when a member of a party does.

**Mr Owens:** In terms of Mr Sola's commentary, I think we disagree, but that's for discussion at another time.

I think, though, in terms of taking a look at a process, as Mr Johnson outlined, we have to look at the numbers of questions that have been posed by the three parties and the backbench and work out a process that we all understand. I think my difficulty is that if there isn't a process that we all have the same understanding of, there's going to be a point where there's going to be a great misunderstanding about what has happened as an event in the House, whether it's somebody being denied a question or somebody being denied something different. I think something a little bit scientific and perhaps codified is what we're looking for.

**Mr Sterling:** I don't think my House leader or any of the other House leaders is going to go for this kind of sophistication in the rules. They've got to have something that's workable, fairly simple for people to understand.

Quite frankly, if the Speaker steps out of line and starts to give an independent too much attention, he's going to hear about, you know? The Speaker's got to respond to his members. The Speaker is the servant of all of those members in that Legislature. If I don't like what the Speaker's done, I speak to him quietly about a ruling or whatever in terms of what I'm not satisfied with. That's what the Speaker's role is, to respond, and hopefully he takes that into consideration. If it becomes more of a problem, then you go back and you look at the rules again or you start agitating for a change, or



you get your House leader to agitate for a change.

That's where I think you've got to be somewhat reasonable in your approach in this thing. Quite frankly, I think the Speaker's handled it quite well to date in terms of dealing with independent members. I haven't heard anybody complaining, at least on our side, about the intervention of independent members, either in questions or how much time he might have had in the House.

I only want to say, back to Mr Owens's question about a burning question, that if an independent member has a burning question for his constituency, he's totally at the mercy of the Speaker. If I have a burning question, or you have a burning question on the government side, you've got another avenue. You go to your question period committee and you say: "Hey, this is A1, top priority in my constituency. I need to have the first one. I can't wait around and take the chance that the second one's going to roll in." So you've got a huge advantage over the independent member to get yours on, as far as the way we're talking about the structure of this whole thing is concerned.

I don't follow that argument at all in terms of me not having the opportunity to sell. If I can't sell it to my own colleagues that it is the most burning question, then I don't see that it is a burning question. You have to make your own arguments with the other people in that room to get on one of those two or three questions. Heretofore, before the NDP took over, party backbenchers never asked questions or rarely asked questions, because it's viewed by the media and everybody else as nothing but a stall. That's the hard truth of the view. I'm sure you view it differently, but that's the way everybody else views a government backbencher question.

When I came here, a backbencher on the government side might ask a question. It might be one question every two weeks from the government side. Then I think it became a little more common under the Liberals.

**Mr Ramsay:** We had such a big caucus.

**Mr Sterling:** Yes. It varies somewhat by the number of members in the caucus.

**Mr Hope:** I can't believe the talk that's going on here.

**Mr Sterling:** It does vary.

**Mr Hope:** You're amazing at times.

**Mr Sterling:** I'm just telling you what the history is.

**Mr Hope:** Well, speak on behalf of your own caucus and don't speak on behalf of the government side members. We'll speak for ourselves on whether questions are relevant or not. Just stick to your own issues and stick to private members' issues. We'll speak on behalf of ourselves, whether questions work or not.

**Mr Owens:** I guess you were told.

**Mr Sterling:** Sorry, Randy.

**Mr Hope:** It's accepted.

**Mr Sola:** I'd like to refer to the memorandum we received, in order to alleviate Mr Owens. On the first page which Mr Sibenik gave us he says, "Most eligible members generally place anywhere between three and thirteen oral questions in oral question period per year. The actual range is between zero and 25 for 1992, and between zero and 26 for 1991." That's in the material that we received from Mr Sibenik.

I do not think that the backbencher who placed 25 questions in the year 1992, if he was reduced to 24 so that one independent would be able to speak, would be seriously hurt by this process, and I think it would be to the advantage of the backbencher who posed zero questions to be able to point and say, "That independent was able to pose a question; why can't I?" The same for 1991, where a backbencher was able to pose 26 questions and another backbencher zero.

**Mr Jamison:** In placing the number of questions, one of the problems that has developed, and it developed with the cameras and the public awareness of being able to tune in, is that we've all very much become good role players and actors at times.

**Mr Ramsay:** We dress better too.

**Mr Jamison:** We dress better and we all comb our hair better also.

I think all of us here can agree that the problem is that this deals with the question of time available, but I believe that under the Speaker's discretion, great latitude is given at times, and often, during question period, to placing a question. I've heard the Speaker ask that succinct questions be asked probably a thousand times. The reason he would make that statement in the House to the person asking the question was simply that there wasn't a succinct question being asked. The degree of rhetoric was at that point unbelievable and the member was playing directly to the camera and for effect. In politics, that's an inherent factor that exists.

If we are going to allow, and I think this addresses some of Mr Owens's concerns, that as many questions can be asked in the House as possible, just as there is a limit on making a statement, there should very well be a limit on asking a question, with the possible exception of something being so intricate that it's not possible to ask a question within a certain period of time.

1100

But I think as a member of this Legislative Assembly committee, and I'm saying this non-politically, this is a major problem. We are all long-winded politicians at times and we take advantage of the situation. The problem about the numbers of questions being allowed to be asked in the House is very much our own fault. I've timed questions in the House, and if I were that

long-winded at asking my children questions when the time came, I'm sure I'd lose the opportunity to ask them as many questions as I'd like also.

**Mr Sola:** You'd be able to put them to bed much earlier.

**Mr Jamison:** The problem is that already we have difficulty, in question period, in allowing the rotation of the number of questions allowed. At times, people don't get on, and this is what Steve Owens is saying. He's saying it because it's a fact that the official opposition and the third party have built into the rules the ability to ask more questions out of a rotation. Unfortunately, it's the same with every party and every Parliament since the inception of live coverage. The rhetoric and the play and the role-playing overcome the actual ability of people to really get down to brass tacks and ask direct questions without rhetoric.

So if we're concerned, as a committee here, about the ability to include independent members in question period, I think some of the concern evolves directly around how we, in official parties, handle the situation about the amount of time taken and the theatrical performances required, once on camera. That may, in the end result, require us to limit our own questions by specific time, and then I think all of us would feel better about the inclusion of independent members' questions, because question period is not working the way it should for the members in the House.

**Mr Sterling:** That's an issue, Norm, which I think is important, but it's not an issue which we're really—if we wade into that area, we'll have as many opinions as whatever. I only say that it's to the advantage of the government the way question period operates now and not to the opposition. We're our own worst enemies in that thing. I don't want to get on to that debate. Mr Chairman, is there anything else to discuss?

**The Vice-Chair:** There are actually two more people on the list. The two people on the list are Mr Ramsay and Mr Owens. If we allow them to speak, if they wish, and then what I suggest is that we deal with the issue of Peter preparing a report and deal with Mr Sterling's deferred motion.

We also have to make some decision with respect to how we're going to deal with the Municipal Freedom of Information and Protection of Privacy Act. We must have a report completed before December 31 with respect to that act.

I think those are the items that we have to deal with. I think probably we all agree we'd like to complete proceedings this morning with respect to this committee.

**Mr Hope:** Oh, we do?

**The Vice-Chair:** Yes, that's my suggestion.

**Mr Ramsay:** What was that again?

**The Vice-Chair:** That we'd like to complete this morning and we don't come back this afternoon, that we

complete what we have to do today. Now, with that I'll move to Mr Ramsay.

**Mr Ramsay:** Just another plea to recognize that much in the British parliamentary system is not written out. A lot of it's based on custom and precedent. We should allow the Speaker the latitude of the to and fro that happens in the House, to get back a little more to that. So again I would just make the plea to state some general guidelines and maybe use the words as I've suggested in a fair and proportional way so that there is some sort of sense of limit there, that we want fairness. I really think we should move on to the next topic.

**Mr Owens:** I was going to suggest, at the risk of moving things on, that in terms of how the report is drafted, I'm prepared to accept the consensus of the committee and bite my tongue and hope for the best.

**The Vice-Chair:** In that case, could I perhaps have the report indicate—I'll see whether there's consensus on this—that the committee feels a fair level of dissatisfaction with the way the question period works in general now? Is that a fair consensus? We can throw in the report that there's a general unhappiness with the way—

**Mr Ramsay:** Why get into that?

**Mr Owens:** That's not the way I would draft that. It's not quite what is meant.

**Mr Sterling:** Forget it.

**The Vice-Chair:** Forget that, okay. But it's true.

**Mr Sterling:** We'll put it in another report.

**The Vice-Chair:** Put that in another report, okay, that's fine.

With that, Peter, do you feel you have enough direction to go with the report now?

**Mr Sibenik:** Yes.

**The Vice-Chair:** There are obviously going to be some areas where you say there was no consensus on these items.

**Mr Sibenik:** That's correct.

**Mr Hope:** Most of them are with me, right?

**The Vice-Chair:** But we have some areas of consensus.

**Mr Owens:** We're going to show a consensus with a tongue bitten, of course.

**The Vice-Chair:** I would suggest, if Mr Sterling would agree, that his motion be deferred until we have Peter's report back.

**Mr Sterling:** Is there consensus over that part?

**The Vice-Chair:** I'll have to ask Peter about that.

**Mr Sibenik:** There was some discussion of your particular motion yesterday, and I didn't really sense at that time that there was consensus, although I may be—

*Interjection.*



**The Vice-Chair:** Okay, I'll read the motion.

**Mr Sterling:** Why don't you just pass it out?

**The Vice-Chair:** Why don't we just pass it out, yes. Keep a copy of it. I'll need a copy too.

*Interjections.*

**The Vice-Chair:** There's no consensus there.

**Mr Hope:** No consensus from me.

**The Vice-Chair:** Okay. In that case, I think it should be deferred until we have the report.

**Mr Sterling:** The only thing is that I don't think anybody is denying that private members should have the opportunity to sit on a committee. I think Mr Hope is the one who is expressing the most opposition to this. If he has some other kind of alternative, I'm quite willing to look at it, and I think it should be put forward by him.

**The Vice-Chair:** That's why I was suggesting it be deferred.

**Mr Sterling:** No, for Peter to put in his report.

**Mr Hope:** I have already indicated in Hansard how I felt that mechanism could work to allow an independent to be a part of the process, that the current rules that are there stand, and for every extra independent who wishes to participate, how that participation would occur—we had differences of opinion about that—whether it goes to the Speaker or the House leaders. There was difference in that, but I'm saying for every additional independent who is then put forward on a committee, an extra government member is established to make sure the balance of representation is still there, that the government holds the majority on the committee.

**Mr Ramsay:** Not that we're suggesting that it's going to supersede the rule that the—

**Mr Sterling:** I think the only difference in his proposal is that first of all, his proposal would require that the 11 be taken out—

**Mr Hope:** No. My proposal says that the 11 stays for the identified parties, and then there's a special clause dealing with the right of an independent member.

**Mr Sterling:** So you add an independent member.

**Mr Hope:** If you add an independent member, then the government side gets an additional member.

**Mr Sterling:** That makes 12.

**Mr Hope:** That's the only time that you'll start to change the numbers. I heard comments yesterday saying, "We really don't need 11 people here," okay? That's up to the House leaders, but everybody goes to the common practice of putting 11 on a committee. But what I'm suggesting is that we identify the independent's rights of participating in a committee. You keep the current rule as it is and you put a (b) clause to it which says that for every independent that is established

to a committee, an extra government member is established.

**1110**

**Mr Ramsay:** There would be 13 members on the committee.

**Mr Hope:** Yes. But it's only governed by the independents and you still keep the ceiling on the 11.

**Mr Ramsay:** I don't mind if you want to make some sort of a permanent amendment, because I think that's what would have happened under Norm's, except Norm just didn't spell it out. Norm has said he didn't intend that the balance of power be affected by the introduction, so I don't think we're—

**Mr Hope:** No, but he's removed the ceiling.

**Mr Ramsay:** You just want to spell it out exactly, that's all. That's what you're saying.

**Mr Hope:** He's removed the ceiling, which I have a problem with. I say the current status quo stays, and then for the independents to be established—

**Mr Ramsay:** Norm, if I could suggest: As I agree with you that this is not a big problem, why don't we just spell it out?

**Mr Sterling:** I think the bigger problem is how the independent gets on the committee.

**Mr Hope:** That's right.

**Mr Sterling:** Randy believes the Speaker should have control, without a vote in the House, as to the independent being on a committee. In other words, the independent has a greater right than you and I, as individual members, to go to the Speaker and ask to be on a committee.

**Interjection:** So the House leaders determine this.

**Mr Hope:** No, you can go to your House leaders. Just reverse your arguments, what you just told me about question period, about governments and opposition. You have that right to put your case forward to your House leader or your whip's office of why you should be on that committee. I'm saying now use that same philosophy that you just spread this morning on the committee side and the justification to the Speaker. That's all I was saying.

But we've quite a difference of opinion on this: How does he actually get on the committee? I'm willing to look at options. I've put how I felt to allow the independents, what I felt was the proper process, and you have a difference of opinion. I think working on a happy medium in between, I'm willing to look at. I'm not status quo.

**The Vice-Chair:** I'm just wondering if we might better resolve this by asking legislative research to set out in his paper some options with respect to this.

**Mr Owens:** In terms of my colleague's proposal, on a point of clarification, I don't understand how you maintain status quo with respect to the numbers but then

add an independent. How do you maintain the primacy of the government?

**Interjection:** I say we vote for 11 to 13.

**The Vice-Chair:** There's 13, with one additional government.

**Mr Ramsay:** Just add the extra government member. That's fine.

**Mr Owens:** I am troubled again by just the expansion of the committees without the—

**Mr Ramsay:** That was Norm's point: Just keep the primacy of the government but don't restrict the House leaders in making that there have to be extra people. Maybe they'll just reduce the size but still keeping the primacy of the government. That's the only difference between, really, Randy's and Norm's, and maybe who does it. That's the other thing.

**Mr Sterling:** The one question I have for Randy: As I understand his proposal, the independent member would go to the Speaker and say, "I want to be on the standing committee on resources development."

**Mr Owens:** The Speaker shrugs and says: "I don't care. You're on it." Right?

**Mr Sterling:** That's right. But is there a vote of the Legislature to confirm that?

**Mr Ramsay:** There would have to be.

**Mr Sterling:** Well, that's a major, major departure.

**Mr Hope:** Okay, I go back to Gilles Morin's comments. Let's look at the independent and let's say the House is not sitting, Norm, and a decision is made to choose the role of an independent because of a piece of legislation and you want to get on that committee. Where is your mechanism? You're not going to get to that committee, other than to—you're not going to be able to vote.

**Mr Sterling:** Well, there's no mechanism for any of us.

**Mr Hope:** Oh, yes. You can always be substituted through your whip's office. You have the option to be substituted into that committee because you already hold seats on that committee, where an independent member doesn't have that avenue, and I'm looking at the independents.

**Mr Sterling:** He doesn't have that right. He wouldn't have that flexibility.

**Mr Hope:** That's right.

**Mr Sterling:** That's part of being a party, I guess.

**Mr Hope:** That's why I said that (c) would have to change too, on that clause, for the simple fact that they won't have a whip to make changes, so (c) would have to accommodate the independent also.

**Mr Sterling:** I see this as a bigger problem for government than I do for any opposition. Let me take an example of somebody who is not an independent—I

won't even name the name, but you'll know who I'm talking about—who feels very, very strongly about public automobile insurance. He goes to his party and he says, "I want to sit on this committee on automobile insurance," and they say, "No way, José." So he says, "Hmm. How do I get on that committee? I become an independent. Then I go to the Speaker and I demand to be on that committee," and he's got a tremendous story to sell to everybody. "My party, the government, wouldn't allow me to go in and speak my piece on this committee, so I had to become an independent in order to involve myself in this debate."

I'll tell you, I don't want it when we're in government that way.

**Mr Hope:** I have no problem with it. That's what they're doing today. Isn't that what's happening today?

**Mr Sterling:** I think the structure of the committee should be voted in—

**Mr Hope:** Don't use that philosophical viewpoint, because that's part of the issue of why people choose to sit as independents. It's because they don't agree with the policy. Sorry about that; I apologize.

**The Chair:** Mr Owens.

**Mr Owens:** In terms of moving the good work along here, I'm not sure whether we just want to have a non-consensus decision on this as opposed to putting it to a vote, and sort it through as we move along. I think there's a number of different issues, Norm.

**Mr Sterling:** But I can't support Randy's because it doesn't make any sense in terms of our existing standing order.

**Mr Owens:** The endless building of committees, in my view, doesn't make sense either. So if we add two more members and we add two—

**Mr Sterling:** That's fine. We'll just put them all down and we'll sign our names beside what we think is reasonable and what isn't reasonable. That's probably the best idea. That's fine, then.

**The Vice-Chair:** So we'll put the alternatives that have been put by the—I think that's reasonable, when the report comes back later. So in effect we're deferring this till the report. Is that correct, Norm?

**Mr Sterling:** Sure.

**Mr Owens:** That's sorted out.

**The Vice-Chair:** That's good. Great. The next item is the question of dealing with the municipal freedom of information act.

**Mr Sterling:** I haven't heard from all the government members. I don't know where everybody stands on this. I think that basically all of the opposition members here are in support of my suggestion with regard to an independent member. Are there any government members who are in support? I know you don't have your strength here. I don't know whether you want



to do that or you don't want to do that, or do you feel uncomfortable voting on it today?

**The Vice-Chair:** At this stage.

**Mr Sterling:** I'm not pushing the issue one way or the other, but I suspect there's some support on the government side on my position. Therefore, I think that—

**The Vice-Chair:** If I might just suggest, I'm sure that this matter can be dealt with when the report comes back, determining who supports what. Give people a chance to think about it and reflect on it. I think that perhaps it can be resolved at that stage.

The next item is the question of when the committee should meet again.

**Mr Sterling:** Never.

**Mr Hope:** Let's just have Norm sit on one side and a couple of Liberals and then I'll get three people on this side; we'll downsize this committee and try to hash this out.

**Mr Sterling:** So that would be 13?

**Mr Hope:** No, no, no. You guys were telling me that's the ceiling of 11, but you guys have a common practice. I can imagine if we remove the ceiling, you'll be going up to 25 people on a committee. Well, you do it now. You said you don't need 11, but we put 11. Check Hansard for some of the comments you've made.

**The Vice-Chair:** Could I perhaps suggest a date, as the Chairman? If we come back on October 13, would that be satisfactory? That will give time for—

**Mr Jamison:** What year will that be?

**Mr Sterling:** My only concern is, I want to tell you, that I suspect our House leader will be pushing for changes to the rules before that time, because we just don't think that independent members have adequate rights at this time. I'm quite sure a lot of my colleagues, probably in most of the parties, feel that way. So we'll continue to push on this end of it.

**Mr Owens:** Rule changes beget rule changes, and if we're going to start with the process, then we may as well do the whole thing.

**Mr Sterling:** No, we're not going to do the whole thing. We have independent members; we have to deal with their problems. So you can do whatever you want on the other rule changes; I don't care. But I think we've sort of determined what our bottom line is on this. I don't like to come out in front of what a committee decides or whatever it is, and I could write the report in about 20 minutes.

**The Vice-Chair:** Research has indicated it wants a

month to prepare the report, and I would like to indicate to committee that's the reason why the date was suggested of October 13. It had nothing really to do with any purpose of delaying the process. It merely had to do with the fact that research—

**Mr Sterling:** I'd like a report the first week we're back.

**The Vice-Chair:** It's possible the report might be ready—well, no, a month is October—

**Mr Hope:** So what if the House leader goes to the House and starts screaming about the rights of an independent member? If research say they need the time to do the work appropriately, and they're saying October 13 is the date, then so be it. So what if the Tories are going to go in and scream about rule changes? What else are they going to scream about? Nothing new.

**Mr Sterling:** I guess we care about what the independent member's role is in terms of—

**Mr Hope:** Read Hansard, Norm, and you'll find out how much you really care about the independent member.

**The Vice-Chair:** Okay. Now let's not get into—I think we have accomplished some consensus and some direction to research.

*Interjection.*

**The Vice-Chair:** Okay, then that will be October 13 if that's agreeable. At that time, we can deal with the matter of the municipal freedom of information act. It just has to be commenced before January 1 and completed within one year.

**Mr Owens:** If I can humbly suggest, Mr Chair, in terms of the subcommittee, which I gather you represent, our august group, that you'll meet to determine the other research needs of the committee. As a person who did the provincial legislation, I can assure you that it's a formidable exercise and that you would want to have enough time to prepare so that some level of intelligent discussion can be had.

**The Vice-Chair:** Right. Yes, we will have to have, obviously, the research; that's going to be work for you too.

Is there any other business to be dealt with? Then I can entertain a motion to adjourn.

**Mr Dave Johnson:** I move we adjourn.

**Interjection:** I was just starting to have fun.

**The Vice-Chair:** I declare the meeting now adjourned.

The committee adjourned at 1122.

## CONTENTS

Thursday 16 September 1993

<b>Role of the independent member</b> . . . . .	M-77
Peter Sibenik, procedural research clerk, committees branch, Office of the Clerk	

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

**Chair / Président:** Hansen, Ron (Lincoln ND)

**\*Vice-Chair / Vice-Président:** Wessenger, Paul (Simcoe Centre ND)

Johnson, Paul R. (Prince Edward-Lennox-South Hastings/PrinceEdward-Lennox-Hastings-Sud ND)

Farnan, Mike (Cambridge ND)

MacKinnon, Ellen (Lambton ND)

**\*Mathyssen, Irene (Middlesex ND)**

**\*McClelland, Carman (Brampton North/-Nord L)**

Morin, Gilles E. (Carleton East/-Est L)

**\*Owens, Stephen (Scarborough Centre ND)**

**\*Sterling, Norman W. (Carleton PC)**

Sullivan, Barbara (Halton Centre L)

Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Hope, Randy R. (Chatham-Kent ND) for Mr Hansen

Jamison, Norm (Norfolk ND) for Mr Paul R. Johnson

Johnson, David (Don Mills PC) for Mr Villeneuve

Ramsay, David (Timiskaming L) for Mrs Sullivan

### **Also taking part / Autres participants et participantes:**

Sola, John (Mississauga East/-Est Ind)

**Clerk pro tem / Greffière par intérim:** Bryce, Donna



2011  
C20  
L20

Gouvernement  
Publication



M-8

M-8

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Intersession, 35th Parliament

## Assemblée législative de l'Ontario

Troisième intersession, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 13 October 1993

# Journal des débats (Hansard)

Mercredi 13 octobre 1993

## Standing committee on the Legislative Assembly

Subcommittee report

Election Statute Law  
Amendment Act, 1993

## Comité permanent de l'Assemblée législative

Rapport de sous-comité

Loi de 1993 modifiant des lois  
en ce qui concerne les élections

Chair: Ron Hansen  
Clerk: Lisa Freedman

Président : Ron Hansen  
Greffière : Lisa Freedman



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 13 October 1993

The committee met at 1537 in room 151.

## SUBCOMMITTEE REPORT

**The Chair (Mr Ron Hansen):** We'll call the committee to order. I'd like to start by reading the report of the subcommittee, which met the other day:

"Your subcommittee met on Thursday, October 7, and recommends the following:

"1. That the committee's ordering of business be as follows:

"(a) Bill 57, An Act to amend the Election Act and the Legislative Assembly Act;

"(b) Role of the independent member;

"(c) Parliamentary reform.

"2. That the committee schedule its biannual meeting with the Speaker and Clerk at a convenient time.

"3. That the committee request a meeting with Bill Somerville (broadcast and recording) for the purpose of its annual review pursuant to the standing orders.

"4. That, with respect to the committee's review of the Municipal Freedom of Information and Protection of Privacy Act, the committee anticipates that it will conduct hearings (if necessary) during the winter recess."

That's the report of the subcommittee. Can I get it moved?

**Mr Norman W. Sterling (Carleton):** I have a question; sorry, Mr Chairman. I'm the representative for my party and I couldn't be there, but I agreed to what is in here. With respect to 4, on the municipal freedom of information act, as I understand, the act requires us to start the process this year; in other words, this fall.

**The Chair:** That's correct.

**Mr Sterling:** This doesn't exclude us from doing that?

**The Chair:** I'll let the clerk answer that. I think it's just that we have to have a meeting on it when we're setting up the hearings.

**Clerk of the Committee (Ms Lisa Freedman):** We have to commence the review prior to January 1, 1994, and we have to finish the review before December 31, 1994. We have to commence it prior to January. It would be commenced by way of either the advertisements or the mailing or the opening statements by the minister in December.

**Mr Sterling:** I just didn't want us to forget that we had to do something in November or December on this.

**The Chair:** Mr Sterling, there's another thing. The report on the role of the independent member was due

today, and the subcommittee agreed—you weren't there—to change it around and bring Mr Sorbara in today. We're supposed to be receiving the report today, and it would be hard to discuss it if it just came to us. This is why we've changed our agenda a little bit.

**Mr Sterling:** That's fine. I think we should just add on item 4—I don't know if anybody would object—that we will start hearings on this in November or December, or before January 1.

**The Chair:** That's why it was "if necessary."

**Mr Sterling:** But it is necessary. That's my point. The "if necessary" were the words I didn't like.

**The Chair:** Could the clerk clarify this?

**Clerk of the Committee:** The "if necessary" referred to if there was any demand. With respect to what Mr Sterling's saying, the subcommittee got closer to November, was going to specifically figure out the advertisements and everything.

**Mr Sterling:** Fine and dandy, as long as everybody's aware of it.

**The Chair:** Do I hear Mr Wessenger moving the report?

**Mr Paul Wessenger (Simcoe Centre):** Yes.

**The Chair:** All in favour? It looks like it's passed. On to the next item on the agenda.

## SUBCOMMITTEE APPOINTMENT

**Mr Kimble Sutherland (Oxford):** I'd like to nominate Mr Wessenger as vice-chair of the subcommittee.

**The Chair:** Any other nominations on the floor? Seeing none, I guess it's by acclamation, Mr Wessenger.

**Mr Wessenger:** I thought I was already. It hadn't been formally done yet?

**Mrs Irene Mathysen (Middlesex):** It's all legal now.

**The Chair:** Before we go on to Mr Sorbara, the report on the role of the independent member will be handed out as a confidential report to all members of the committee.

## ELECTION STATUTE LAW AMENDMENT ACT, 1993

LOI DE 1993 MODIFIANT DES LOIS EN CE QUI  
CONCERNE LES ÉLECTIONS

Consideration of Bill 57, An Act to amend the Election Act and the Legislative Assembly Act / Projet de loi 57, Loi modifiant la Loi électorale et la Loi sur l'Assemblée législative.

**The Chair:** I'd like to welcome you here, Mr

Sorbara. You can lead off with your Bill 57, which you presented in the House for second reading just before the break. Welcome to the committee.

**Mr Gregory S. Sorbara (York Centre):** Thank you, sir. Mr Chairman, members of the committee, I propose to make a very brief opening statement, present for your consideration, through my friend M. Morin, an amendment you might consider to this bill, and then answer whatever questions you might have of me on it.

Bill 57 is really a very simple piece of legislation. Its genesis really arises from a much wider debate that has gone on in Canada for quite some time by those of us who are full-time participants in the democratic process, elected officials in legislatures and parliaments right across Canada; that is, the reform of this institution we call Parliament or the Legislature.

I recall that even as a candidate for the leadership of my party, I and all of the other candidates talked over and over again about reforming Parliament. It's kind of a housekeeping thing. It's not something that is going to put one person to work or change the realities for the people we represent, but it's something that has to be seen to as well as our responsibilities for "more important" issues.

Rather than put before the Parliament a bill that could never succeed, of major reform of the Parliament—and all of us have ideas, I think, about where those reforms ought to go—I thought I could take an initiative that would have a reasonable prospect of actually becoming law in the province of Ontario, and that is reforming the way in which we get to a by-election when a member either dies in office, the seat therefore becoming vacant, or a member resigns his seat, as was the case recently in Essex South.

The mischief this bill tries to remedy is something the Premier, when he was Leader of the Opposition, referred to as the "divine right" of premiers to call a general election or fix the time for a by-election, within the parameters of the Election Act but more or less when it appeared to the Premier of the day as being a politically opportune time to call a by-election.

All of us would admit that it's a rather archaic way of replacing a member who has resigned his seat or filling a seat that has become vacant through the death of a member. The remedy I thought would be very simple: just to fix a date within parameters that would give rise to the by-election and the replacement of the member as soon as possible. The objective is to make sure that the time constituents in a particular riding are without a member is as short as possible.

Bill 57 does that by providing that the by-election shall be held on the Thursday after the 70th day after the vacancy occurs; Thursday because, in Ontario, our tradition is to have elections and by-elections on a Thursday, just as federal campaigns take place on a

Monday. I calculated 70 days based on the following: Elections and by-elections generally are a 37-day period in Ontario; they can be more or less, but our tradition is 37 days, so 70 days would provide for a 37-day election campaign period, a so-called writ period, and a period of some 33 days in which each of the political parties, and anyone else, could have a nomination meeting and choose the candidate. You'd have about 33 days to choose a candidate, and with the 37-day period, that's 70 days in my arithmetic, and presto, the seat which had become vacant is filled. I think that is a fairer and far better way to deal with the vacancy of a seat.

Just by the way, this bill does one other thing that I think is very important in the modern operation of the seat and the office of a member of Parliament. It allows the Speaker to take whatever steps are necessary in order to maintain a constituency office presence during the vacancy period. This, to me, would be very important, particularly if we didn't pass the first part of the bill and the vacancy continued to exist for six or seven or eight or nine months. To deny constituents the opportunity to call a constituency office I think is impractical and unfair in today's democracy. This bill would allow the Speaker, through the Board of Internal Economy, to allocate funds to maintain that office under his or her jurisdiction during the period of the vacancy. That same thing is done in the House of Commons, by the way, and it actually works quite well.

During the debate on second reading there was, first, a broad degree of support, and I appreciated that support, from all parties, but there was some concern expressed that the time frame I had set out in the bill was too rigid; that is, that the Thursday following the 70th day following a vacancy might fall two or three days before Christmas, or it might fall in the middle of a March break period. It was, in short, in the view of some members, a little bit too rigid, and there was some suggestion that an amendment might be considered to enhance the flexibility somewhat. I have asked my colleague M. Morin to propose to you an amendment that would deal with that problem. I think the amendment is before you.

Just to paraphrase the amendment, it would provide as follows: First, the 70-day provision is still in place, except that if within 14 days of the vacancy another polling day is chosen by resolution of the House—that means, practically speaking, that the Premier would bring forth a resolution before us as parliamentarians to set another date for the polling date—then that date would take precedence over the Thursday which is 70 days etc.

You have to deal with the problem that the vacancy might arise when Parliament is not sitting. In that case, the other date could be set by order in council; that is, cabinet would fix the date.

But in all circumstances, whether it's a parliamentary



resolution or a resolution of cabinet, that is, an order in council, the by-election would have to take place within 100 days of the date when the vacancy occurred.

In summary, the main provision is to fix the 70th day, but cabinet or the Parliament has an option within 14 days to choose another date, so long as it doesn't go beyond 100 days from the vacancy. That means that any day within that zero to 100 days could be chosen.

1550

I hope this bill can become law. It's not that it will change the world or, as I say, benefit anyone in any particular way in terms of the substantive matters that we deal with as politicians; it really is housekeeping. But it is a minor improvement and it has some very important meaning, I think, for those constituents who find themselves without MPPs for long periods because the current law allows the date for a by-election to be quite some months away from the time a vacancy occurs.

I commend it to you. I hope we can get it through this committee quickly and bring it back to the House, perhaps for consideration by committee of the whole but ultimately for third reading, so that it will become law and affect a vacancy the next time one arises between two general elections. Thank you for considering the bill.

**Mr Sterling:** Mr Chair, before we proceed, I have no objection to talking about this bill and the amendment at the same time, to be fairly flexible about it, but maybe Mr Morin would like to move the amendment so it's on the record.

**The Chair:** I think that would be better than discussing the bill and have to discuss the amendment after.

**Mr Gilles E. Morin (Carleton East):** I move that subsection 9(2) of the Election Act, as set out in section 1 of the bill, be struck out and the following substituted:

"By-elections

"(2) Despite subsection (1), when an election is to be held to fill a vacancy that has occurred in the membership of the assembly,

"(a) the polling day is the first Thursday that is seventy days after the date on which the vacancy occurred, but if within fourteen days after that date another polling day is set or determined by resolution of the assembly if it is in session or, if not, by order in council, then that day is the polling day as long as it is no later than 100 days after the date on which the vacancy occurred; and

"(b) The day for the close of nominations is the day that is fourteen days before the polling day."

That is the motion.

**Mr Sterling:** I support the general thrust of this bill. I think it was during my remarks on second reading that

I suggested that there not be the rigidity that's contained in Bill 57. You've moved away from that and I think that's good.

Just a short comment on Mr Morin's motion to alter it: I think we should not put a government through the hoops of determining this by resolution in the Legislature, because it could mean an afternoon's debate where everybody jumps into a partisan debate about the election of whoever it is and that kind of thing.

I would leave it entirely up to the cabinet, whoever that cabinet is. You can't gerrymander around 14 days one way or the other that much. Quite frankly, we're talking about by-elections, and these happen sporadically and don't really upset, normally, the majority of the House, so I would prefer just to leave it up to an order in council. It makes it simpler and would probably make, I think, a government more responsive in picking a reasonable date for the election, which is what I wanted in terms of what I was doing.

The only other suggestion I had on this bill, and it was actually mentioned to me by my leader when I discussed it briefly with him, was that perhaps we should consider, if we're serious about the bill, putting this kind of limitation in time to a certain period during the Parliament; in other words, maybe it should be 70 days for the first three years of the Parliament and, thereafter, a six-month period. I'm not married to the three years; it could be three and a half years or it could be four years. But as we get closer and closer to a general election, I think there's some legitimate concern about having the expense of a by-election and then a general election shortly thereafter.

I don't know how you determine what is a normal term of Parliament or a session; only the Premier really knows how long he or she is going to have a Parliament sit. But I do think that there should be some break point, that there should be two sets of rules and more flexibility given to the Premier as you get closer to the end of the potential five-year term. That is strictly from a point of view of saving the taxpayer some amount of money and, quite frankly, the aggravation for the candidates of having to go through two elections, a by-election and then a general election.

I can remember, in the Nepean riding, going through a by-election for Bob Mitchell in November 1980, and then he was back into a general election in I think March 1981.

**Mr Morin:** Jean Poirier also, in December 1984 and the election in May 1985.

**Mr Sterling:** Yes. I just make those comments. I'm very supportive of having it at an earlier date. I think six months is too long, in the normal framework. Therefore, I'm supportive of the thrust of Bill 57 but would really like to entertain an amendment, put forward by your colleague or anyone else, to distinguish

between the front end of the session, or two thirds or three quarters of the session, and the last quarter of a potential session.

**Mr Sorbara:** Mr Sterling raised two points. I think both of them are important points. I'll comment on the first one, which was about having cabinet determine the date under this secondary procedure rather than a resolution of Parliament. The theory behind having the first option be a resolution of Parliament if Parliament is sitting is that, in theory, I believe parliamentarians, the Parliament, the members of the assembly, should seize wherever possible the authority governing their existence and that government should look after the government. What happens in Parliament is not the government's business; it's our business as parliamentarians. Our system of government sort of mixes the government and the Parliament together in the Legislature, but there really are two separate entities.

I believe we should control and set the rules governing how we're elected and the length of time we sit. In fact, in reality under a parliamentary system, that is the case: a non-confidence vote in Parliament ends the life of the Parliament and therefore the government falls. That's the theory of it; in practice, the government likes to control everything.

But to me, that's a theoretical point, and in practical terms it would be the cabinet that decides to bring a resolution to fix another date other than the 70-day period. I'm neither here nor there on it. I just think there should be a little bit of public exposure when the government wants to vary the rules, and the way that exposure is presented to the people is by way of a resolution in Parliament. But I leave it to the committee. If the committee prefers to strike that part of the amendment and just have it fixed by order in council, again that would be fine by me. The major thrust is maintained; that is, a very short period and getting a new member elected.

The second point is an interesting one as well. There is in the act a provision which says in effect that you don't have to have a by-election in the last year of a Parliament, the last year of a Parliament being the fifth year, so this section and the section it would replace do not apply, and a government that has gone four years into its term need not call a by-election. I think that's okay. I wouldn't want to amend that, although there are some who would argue that even if there is another month left of a Parliament, constituents should have a representative.

The question would be, should we look at another amendment that would constrain or redefine the period after the third year or after the second year? I would argue that I don't think we should because we've already got enough in there. Also, I think, more and more, given the experience of 1990, parliaments are going to last closer to their full term rather than be

nipped in the bud. As you say, only the Premier knows how long a term can be, but the real life of a Parliament is five years, and the act does say that there need not be a by-election if the vacancy occurs in the fifth year.

1600

**Mr Sterling:** Can I just respond to that, Mr Chair? I raised it. Once you establish the 70-day rule, I think a Premier would be very foolish, if he were planning to carry on for another year in power and if he were in a sort of secondary period that we created by saying that during the last two years of the Parliament we will give the Premier more flexibility in when this thing should be called—I think the expectation would be that the by-election was going to be in 70 days. I think a Premier would be under a lot of heat after 70 days had gone by if he didn't call within that period of time. I think once you'd established the 70-day rule but allowed more flexibility in the latter part, I don't think you'd have an abuse of it by a Premier, because the expectation would be that it was in 70 days. Once he goes beyond 70 days, he's almost signalling that he's going to call a general election in the not-too-distant future.

**Mr Sorbara:** I'm trying to get the power out of the hands of the Premier.

**Mr Sterling:** I know you are, but what I'm interested in is the practicality of the rule and what is in fact going to happen in most situations. Could Philip read the actual section he's referring to on the final year? Have you found that section?

**Mr Philip Kaye:** That's subsection 27(2) of the Legislative Assembly Act, which says, "This section does not apply where the vacancy occurs in the last year of the legal life of the assembly."

**Mr Sterling:** That's for the six-month section, is it? Okay. They don't have to call a by-election, period, in the last year.

**Mr Sutherland:** I just had one other question. In the debate in the House, I thought someone had also suggested about northern members and having by-elections by this; that it may work out that you were having a by-election in the middle of January and maybe the difficulty in canvassing in some parts of the province, northern Ontario etc. Did you have any thoughts on that issue, or do you feel there is some flexibility to allow that? I know they had a general election in March 1981, and that was a challenge for everybody in all parts of the province. Do you feel there needs to be any accommodation for that type of situation?

**Mr Sorbara:** I'll give you my personal opinion. I did give it some thought, because it was raised in the debate, Kimble, as you said. Frankly, I think it's not necessary. This additional flexibility of another 30 days allows you, say, to get out of February and into March.

When you talk to our northern members, they're



travelling around their ridings every weekend. If you talk to Mike Brown, he's flying here and there. All of them; Howard Hampton, the same thing. I just couldn't justify saying to the constituents in the northern constituencies, "You can do without an MPP because it's cold and travel is difficult." Yes, it's going to be more difficult to campaign during that time, but I think the balance is in favour of getting through the by-election and getting a new member elected.

**Mrs Barbara Sullivan (Halton Centre):** I like this bill very much. There is perhaps some usefulness to the contribution of Mr Sterling with respect to the role of the assembly. Much as I regret it, I think the practical and traditional role of the Premier has to be recognized in terms of shaping our legislation: It's clear that traditionally it is the Premier who has announced the date of the elections, and the writs have followed that announcement. So I think that kind of amendment to save the proposed bill and to ensure that it moves forward is a valid one.

I'm less concerned about the arguments that are placed by Mr Sutherland with respect to convenience of the campaign team. I think we have to weigh the question of the convenience of the campaign team against the rights of constituents to be represented in the House of Assembly. That seems to me a greater right than ensuring that people are comfortable during a campaign period.

We are in a modern era of communication. I know, having participated in many campaigns, that being at the door at certain times of the year and at certain times of the week is a less attractive method of campaigning than is mail, telephone or other vehicles.

I think the amendment Mr Sorbara has put with respect to the 70-day/100-day approach is really a useful one, because it does allow for the intervention of such problematic times as the Christmas holidays, Easter or other religious holidays, and March break, when it seems that the province pretty much closes down. The 70-day/100-day options, however, do give time for the election office to gear up, for the papers to be appropriately filed, for the political parties and independent candidates to determine if they are going to seek election and to begin to prepare for that election, including going through their own nomination processes.

I like this bill. I think it's a shame when people in a geographic district are not represented in the House.

I would also like to see, in addition to this approach with respect to vacant seats, that the government would ensure that after a period of time in which there hasn't been a change in electoral boundaries, that there be a statutory requirement for change. I think many of our people are not being well represented now because of the demographic changes that have occurred over a period of time. However, that is another issue.

I like this bill and I will be supporting it. I would be interested in seeing whether the other members of the committee would support a secondary amendment which would remove the words relating to the resolution of the assembly, and then move the bill on from there.

**The Chair:** Any more comments?

**Mr Sterling:** I wasn't aware of subsection 27(2), which our legislative researcher, Mr Kaye, has pointed out, as Mr Sorbara did: "This section does not apply where the vacancy occurs in the last year of the legal life of the assembly." My feeling is that if we're going to scope the time here in terms of bringing it down, I'm somewhat attracted to widening the scope of that one from one year to perhaps 18 months or something like that. Does that have any kind of attraction to other members, or leave it as it is?

**The Chair:** Any other comments?

**Mr Sutherland:** I'd say just leave it.

**Mr Sterling:** Okay, that's fine.

**The Chair:** Other comments?

**Mrs Sullivan:** If it's appropriate, I would move that the words "or determined by resolution of the assembly if it is in session or, if not" be deleted from the amendment as proposed by Mr Morin.

1610

**The Chair:** Any discussion? All in favour? That's passed.

All in favour of Mr Morin's amendment as amended? Agreed.

All in favour of section 1 as amended? Agreed.

Section 2: Any discussion? All in favour of section 2? Agreed.

Section 3: Any comments? All in favour of section 3? Agreed.

Section 4: All in favour of section 4?

**Mr Sterling:** Just a minute. Could I ask the proponent, Mr Sorbara, the reason for putting the Speaker in charge of the constituency office rather than perhaps the leader of the party the member was involved with, or their House leader or whatever?

The problem with the Speaker is that, having had what I consider a successful constituency office for some 15 or 16 years, a fair bit of direction is required on my part in terms of telling staff what to do, whether I meet with them or whatever. I wonder about the practicality of the Speaker having any time to give direction to constituency office staff.

While a constituency office is not a political function, and I think that's probably why you'd pick the Speaker, there is a bias in that constituency to elect a New Democrat or a Liberal or a Conservative; therefore, I feel it would be better taken care of if it were put in the hands of a recognized party that member came from.

**Mrs Sullivan:** What would you do about Dennis Drainville?

**Mr Sterling:** Unless they were an independent, and then I would take the Speaker.

It's a toss-up. I don't feel hugely strongly about it. I just wonder whether the Speaker would be phoning my constituency office and saying, "Are there any problems today?" I think there would be a better chance that somebody in a party would cover off than not.

**Mr Sorbara:** I understand your concerns. There are really two reasons I've chosen the Speaker.

The first is that it's based on the model that's currently used in Ottawa, and it seems to have worked there. As a practical matter, the Speaker exercises the authority but generally works through the party that held the seat at the time of the vacancy and generally continues to employ the people who have been running the constituency office at the time of the vacancy, but the Speaker has the ability to ensure that the constituency office doesn't instantly become a campaign office for the party. He can exercise some degree of control to ensure that there is a modicum of impartiality while continuing to serve the constituents rather than the electoral process.

The second reason is simply a matter of budget. The budget comes from the Board of Internal Economy. The Speaker is the Chair of the Board of Internal Economy, and I thought the responsible person would more appropriately be the Speaker because of those budgetary realities.

**Mr Morin:** I'd like to relate to Mr Sorbara's example he just gave, and why also I like his amendment 27(1). When Dalton McGuinty Sr died, in March 1990 I believe it was, I took over his office. His assistant came to my office at my cost. I did it because it was a service I was rendering to Dalton's constituents; not because he was a Liberal, but to his constituents.

Personally, when I was first elected in 1985, when I took over the office the incumbent had, Mr MacQuarrie, all the files were gone; there was nothing left. I'm there as an MPP to help all the constituents; I think it was quite clear that my role is to help all constituents. When I say "file," I'm talking about workers' compensation cases, cases dealing with Community and Social Services. Everything was gone. These people came back, came back because they needed my help, so I had to start all over again.

Maybe some day that should be a topic we should discuss. When you take over a company, for instance, you take the books. It should be the same thing when you take over a constituency office. There are some files that have been created, that have been built, in order to help the constituents. I don't care which party you represent; you are there to serve the constituents. I think we should look at that one day.

I like your amendment. I like what you've introduced. I think it should be the responsibility of the Board of Internal Economy to provide the funds. I won't mention how much it cost me, but it cost me a lot of money out of my budget that I could have used for something else. I'm glad I did it, but just the same, I think the amendment you bring in would be excellent, because it could happen to any one of you.

**Mrs Sullivan:** I think the experience Mr Morin went through is a poignant one, because clearly there was service recognized as being necessary for the constituents. If we leave constituents without a place to go—and we know that many of them cannot work their way through the bureaucracy. We know that many of them are placed in extraordinarily difficult positions by not understanding overlaps or different lines to follow in terms of accessing service.

If we say that even for a period of time the constituency office isn't useful, then is it useful at all? In my view, it is useful. The members who preceded me, before my riding was even formed, were far more willing in terms of my constituents than the previous members were with Mr Morin. But my constituents would be badly served without an office to help them through their workings with government.

I have not always been of that view. I was one of those who believed that a member ought to be able to do the work of the member at Queen's Park. Having seen the case load I have in my riding and that other members have in their ridings, which is a substantially different case load than I believe it was, say, when Mr Sterling began in this House about 15 years ago, I think the nature of the work members do has changed and the urgency of the work has changed. I think this is a very valuable amendment and that Mr Morin's experience speaks eloquently to that.

1620

**Mr Sterling:** I want to make it clear that I wasn't speaking against the concept. I was talking about the control issue. I, like Mr Morin, stepped in when Noble Villeneuve's predecessor, Osie Villeneuve, passed away in 1982 or 1983. But I have expressed my opinion that I think that it's better taken care of in terms of real service to the constituents when it's left within the party structure rather than the Speaker. When it's the Speaker, I think it becomes more bureaucratic that way, that fewer problems are resolved, perhaps, than if it was done the other way. I'm willing to live with it the way it is; I just wanted to hear what others thought.

**The Chair:** Mr O'Neil, we're on section 4 of the bill. You have some comments?

**Mr Hugh O'Neil (Quinte):** Just general; I've been upstairs in my office with some other things going on, but I had the TV on and I've talked with Mr Sorbara on this. What I'm going to say may be a little repetitive, but I have also experienced, over the 18 years I've been



a member here at the Legislature, different occasions when somebody has either died or a member has resigned because of health reasons or other reasons, and constituency offices have been closed. An office must be closed within so many days and staff let go within so many days.

I just wanted to add my words of support to the bill Mr Sorbara has placed before the committee and some of the comments made by the other members. If my constituency office is an example of what goes on, on some days we have people actually lined up at the door, some sitting on chairs within the constituency office and others lined up outside waiting to get in for assistance, the assistance many of you have already mentioned that they're looking for. I would support what the committee is looking at and maybe some of the changes they're talking about.

But I think we have to make sure that if a member leaves the Legislature by resigning or through death or sickness, there should be some other system put into effect whereby those constituency offices could remain open. Whether they would be under the direction or the authority of the Speaker—I don't know who would actually be in charge of that office, but we certainly should make sure they are not closed for any reason at all. Especially with some of the things that the country is experiencing now, people really come to us for assistance and for help.

Again, I support what Mr Sorbara is trying to do and some of the amendments that have been brought forth. I feel strongly enough about it that, even though I'm tied up in my office with other meetings going on, I wanted to come down and say a few words.

**Mr Sterling:** I understand the lineup at Mr O'Neil's constituency office is because he gives out free coffee and doughnuts. Is that true, Hugh?

**Mr O'Neil:** Well, we could think about that. It always helps.

**Mr Sutherland:** The assembly should not pay for that.

**Interjection:** I'll pay for that for you.

**The Chair:** I know your concerns, Mr O'Neil. Being a new member coming in, when I walked into the office—I understand that compensation claims were mailed back to a lot of the constituents with the problems, but it took a couple of months before you got up and running again, being a new member. It'd be the same situation with a by-election, where a new member would come in. I think it is a big concern. It isn't anything partisan. It's an issue with a constituent in your riding, so it's well taken. I'm glad you were able to come down.

**Mr O'Neil:** I think that's a point that's well made too. Sure, we're political in a lot of things, but when we have people come into our constituency offices, the last

thing we would ever ask them is, "What are your politics?" or things like that. We are there to serve people who have every political affiliation underneath the sun, and most of them have no political affiliation; they're just coming to us to look for help. I think it's very important that we look at this bill and have the government support it.

**Mr Sterling:** I'd like to add something. Mr Morin made some suggestion about a former colleague of mine who had taken the files with him when he—

**Mr Morin:** No, the files were not there any more. I don't say he did it purposely. That was the custom, the way it was done.

**Mr Sterling:** There is another side of that argument which I would subscribe to; that is, if people give me confidential information, I don't have the right to pass that on to my successor.

**Mr Morin:** Good point.

**Mr Sterling:** Mr MacQuarrie, having practised law and understanding the solicitor-client relationship within the law, would be very concerned about that aspect. I think there are two sides to that argument that have to be considered.

**Mr Morin:** Mr Sterling is showing his legal background, and I congratulate him for it. I think it is a very, very delicate point, when you are given private and confidential information. But I think it's only a formality. You receive the file; then, it could be in cooperation with the person who has been defeated or some other means. We call that individual: "We already have your file on hand, and Mr X or Mrs X will continue dealing with your case. Are you agreeable to that?" If not, then the file just disappears.

What I am talking about is continuity to make sure that the constituent who came to see you—you mentioned a few minutes ago that you don't care what party he represents; you are there to help him out. When it comes to files, of course, if you have confidential information, I as a member wouldn't have to leave it there unless I had the authorization from the individual.

**Mr O'Neil:** There's just one other point I wanted to make. The people I have working for me in my offices—we have a Toronto office, but because I have the two cities of Trenton and Belleville, I'm almost required, because of that population base, to have two offices, which sometimes presents us with some problems in managing our budget, to run two offices. But the people I have, and likely most of you people, are very dedicated, very sincere people, and I would hate to see those people with all the experience they have laid off within so many days, 30 or 60 days, something like that, and the office closed. We have a very important base of experience that people can draw on. There may be some things you would have to look into or examine in that case, but they're people who are used to dealing

with people's problems, helping them out, and that's another reason for keeping those offices open.

**The Chair:** I know it's a very short period. When Margery Ward passed away, I think it was two weeks to wind up the office.

Any other comments?

Section 4 of the bill: All in favour of section 4 of the bill? Carried.

Section 5? Carried.

Section 6? Carried.

Shall the title carry? Carried.

Shall the bill, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Agreed.

Thank you, Mr Sorbara. You know, this is one of the quickest bills I've gone through.

**Mr Sorbara:** Just like that.

**The Chair:** Any other business of the committee today? The next meeting will be October 20, and we'll be going over the report on the role of the independent members. This committee's adjourned.

The committee adjourned at 1628.





## CONTENTS

Wednesday 13 October 1993

Subcommittee report .....	M-87
Subcommittee appointment .....	M-87
Election Statute Law Amendment Act, 1993, Bill 57, <i>Mr Sorbara</i> / <b>Loi de 1993 modifiant des lois</b> en ce qui concerne les élections, projet de loi 57 .....	M-87

### STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

- \***Chair / Président:** Hansen, Ron (Lincoln ND)
- \***Vice-Chair / Vice-Président:** Wessenger, Paul (Simcoe Centre ND)
- \*Dadamo, George (Windsor-Sandwich ND)  
Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)  
MacKinnon, Ellen (Lambton ND)
- \*Mathysen, Irene (Middlesex ND)  
McClelland, Carman (Brampton North/-Nord L)
- \*Morin, Gilles E. (Carleton East/-Est L)
- \*Sterling, Norman W. (Carleton PC)
- \*Sullivan, Barbara (Halton Centre L)
- \*Sutherland, Kimble (Oxford ND)  
Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)

*\*In attendance / présents*

#### **Substitutions present/ Membres remplaçants présents:**

Cooper, Mike (Kitchener-Wilmot ND) for Mrs MacKinnon

#### **Also taking part / Autres participants et participantes:**

O'Neil, Hugh P. (Quinte L)

Sorbara, Gregory S. (York Centre L)

**Clerk / Greffière:** Freedman, Lisa

#### **Staff / Personnel:**

Kaye, Philip, research officer, Legislative Research Service

Wernham, Chris, legislative counsel



C12011

XC20

-L20



M-9

M-9

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 20 October 1993

# Journal des débats (Hansard)

Mercredi 20 octobre 1993

**Standing committee on  
the Legislative Assembly**

**Comité permanent de  
l'Assemblée législative**

Role of the independent member

Le rôle du député indépendant

Chair: Ron Hansen  
Clerk: Lisa Freedman

Président : Ron Hansen  
Greffière : Lisa Freedman



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



# LEGISLATIVE ASSEMBLY OF ONTARIO

M-95

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 20 October 1993

The committee met at 1540 in room 151.

### ROLE OF THE INDEPENDENT MEMBER

**The Chair (Mr Ron Hansen):** We'll call this meeting of the standing committee on the Legislative Assembly to order. Today is consideration of the report with respect to the role of the independent member. In front of you, you have a paper that's been written by Peter Sibenik. To start off, Peter can go through this paper with us and then we'll go to members of the committee for any questions on the report. Go ahead, Peter.

**Mr Peter Sibenik:** First of all, I should indicate to members of the committee that in the document you have in front of you there's a covering memo entitled *Role of the Independent Member—Draft Report*. Some of the pages after that may be out of order. The page after that should be the introduction of the report, the page after that one should be the page with the title "Recommendations" at the very top, followed by the two pages thereafter. The "List of Issues" paper, with page 1 at the bottom, continuing on to page 2, should be at the very end of this. I hope we're all straight about that. I'm sorry for the confusion.

What I'm going to do is head directly into the introduction of the report. In putting together the draft recommendations, what I decided to do at the very outset was to put together a list of items on which there appeared to be have been some kind of general consensus on the part of the committee. I have listed these five areas of consensus right at the outset, on page 1.

These areas of consensus are in no particular order; however, I thought that one of the dominant themes, one of the dominant issues at the committee hearings over the summer and the fall was the fact that the House is composed of 130 members and that when one examines the issue of independent members one also has to be cognizant of the fact that the House is composed of 130 members. That is one of the concerns that was expressed in the course of the committee deliberations on the role of independent members.

The second area of consensus that I've indicated on that very first page is the fact that independent members, as was pointed out by several people in the course of the hearings, have many opportunities to participate in the course of proceedings before the House, the committee of the whole House and indeed in standing and select committees. The previous memo that you may have read sort of indicated the areas in which members could participate.

The third area of consensus was that there seems to have been some concern about the fact that there are some ambiguities concerning the rights of independent members, their entitlements. There were certain qualifications in certain of the standing orders that seem to indicate that entitlement to a certain procedural matter was a function of party membership, so there was some

concern on the part of the committee in that regard.

I thought there was also a consensus that independent members should be less inhibited by these qualifications or concerns or restrictions on what independent members could or could not do, so the fifth area of consensus was with respect to certain aspects of the proceedings before the House and its committees that the committee felt should be altered in some way. I have listed them as members' statements, oral question period, private members' public business, speaking opportunities in the House and its committees, committee membership and access to certain documents.

Turning to the draft recommendations themselves, beginning with the page that has the title "Recommendations" at the top of it, I've drafted six recommendations. The very first one is members' statements. There seems to have been a consensus to the effect that independent members should have an opportunity to make a member's statement—in a sense, a 10th member's statement—in the course of the item of routine proceedings known as members' statements and that there should be an additional 90 seconds allotted for this particular member's statement.

The Speaker should recognize an independent member from time to time. There seems to have been some concern about the opportunities for making members' statements. Members in the House generally do not have all that frequent an opportunity to make these kinds of statements, and independent members perhaps should be subject to the same kind of opportunity all members have to make those kinds of statements. That is the first draft recommendation.

You will note that the expression "have regard to the opportunities that members of the [recognized] parties have" is used throughout the course of these draft recommendations. It's a phrase I thought was useful in trying to give some guidance to the presiding officer, the Speaker, as the case may be, as to how discretion should be exercised. That is the very first draft recommendation.

The second one deals with oral question period. In this particular case there seems to have been a consensus that oral question period should not be extended beyond 60 minutes for the purposes of the Speaker recognizing an independent member. The Speaker should from time to time recognize an independent member to place a question. It's not quite clear whether the committee was in favour of the independent member being allowed to place a supplementary, but clearly an independent member should be allowed to put a question from time to time, at the discretion of the Speaker, having regard to the opportunities members generally have to place questions in the House. That was the second recommendation.

I should indicate that apart from the question of supplementary, there's also the issue of late shows. The committee did not address the issue as to whether an independent member who places a question in question



period should be entitled to request a late show. That is something it may want to reflect on.

I should indicate that in several places in the course of these first two recommendations I have placed in square brackets the word "recognized," because there is some ambiguity, if I can use that word, as to whether the draft recommendation should be phrased in terms of "members of the recognized parties" or simply "members of the parties." You will see in the list of issues exactly what I mean by the ambiguity concerning the word "recognized." There's a widespread assumption in the assembly community that a recognized party has 12 members or more. It's not explicitly outlined or specified in the Legislative Assembly Act or the standing orders, but that is the widespread assumption. Perhaps the committee may want to reflect a bit as to the actual way in which this particular recommendation with respect to the use of the word "recognized" is phrased.

The third draft recommendation deals with private members' public business. I've separated the recommendation into two areas: (1) the situation where an independent member wants to move a motion and wants to participate in the ballot as well, and (2) the situation where the member wants to participate in a motion that has been moved by another member of the House. Those are two separate situations. I had thought that the committee was in favour of allowing an independent member to participate in the ballot and permitting that independent member to move a motion and make a reply at the end of the private members' hour.

1550

I have alluded to standing orders 96(c)(i) and (iii), and also 96(d). What I haven't alluded to there is 96(c)(ii), which gives members of recognized parties an opportunity to speak a second time in the course of private members' hour. In this particular recommendation, item 3(a), we really haven't indicated whether or not an independent member will have that second opportunity to speak in the course of private members' hour. The way it's drafted right here suggests that the independent member does not have that opportunity. So what the private member would do is, he or she would move the motion and would have 10 minutes at the outset and a two-minute reply at the end of the hour, and that's it, according to the way this particular recommendation has been drafted.

The second component of private members' hour of course is the situation where the independent member wants to participate in the debate on another member's motion, another member's ballot item. In this particular instance, what I have done is indicate a two-step approach as to how the independent member would participate. There was a consensus at the last meeting of the assembly committee that an independent member should be allowed, from time to time, to participate for up to five minutes at the end of the particular debate. It was going to be at the Speaker's discretion as to whether the independent member would be allowed to make that five-minute participation.

I would say that there are certain problems with respect to the balloting, as to how an independent member is going to participate in the ballot. At present there

are three ballot boxes that we have at the outset of a session of Parliament, and the picking of the names from these boxes is done in rotation. I'm not sure, and the committee didn't really particularly address this point specifically, how an independent member is supposed to be picked from that rotation. It's really an issue. I'm not quite certain; I have some options that the committee might want to consider.

We might want to establish a fourth box for independent members and every once in a while take a name from that fourth box. So if there are four independent members, their names would be in that fourth box and every 20th or 25th name that was taken from the other three boxes—well, in that case an independent member would be picked, so by the end of the balloting all of the independent members would have been selected. That's one particular option.

**Mr Paul R. Johnson (Prince Edward-Lennox-South Hastings):** That would depend on how many independent members were on the books. You'd reduce that number, right?

**Mr Sibenik:** You're absolutely right about that, and how you would draft the formula for this so that it would be applicable. Whether it would be one independent member or five or 10 would be something I'd really have to give a bit more thought to. It gets kind of complicated. There's a mathematical formula I'm sure one could devise to assist.

**The Chair:** Maybe we can go through the whole report, Mr Johnson, and then we'll take questions. I think there are a lot of questions to be asked on some of these details here.

**Mr Paul Johnson:** But some of them should be made on the basis that we have three independent members right now, right?

**Mr Sibenik:** Yes.

**Mr Paul Johnson:** Or we did.

**Mr Sibenik:** The fourth draft recommendation deals with speaking opportunities in the House and in the committees. I don't think this particular draft recommendation, at least the first five lines of it, says anything innovative. There's not something new that is being proposed here, because independent members do have a great number of opportunities to participate in the House, in the committee of the whole House and in standing and select committees. There is a fairly extensive list of things they can do.

What really has been done here is that I've identified three criteria by which the Speaker or other presiding officer, as the case may be, would exercise his or her discretion in recognizing an independent member to speak. The first one should be fairly familiar from the previous recommendations, namely the fact that there are a global number of opportunities that are available for speaking. The Speaker would have to exercise some discretion in that regard so that the independent member wouldn't necessarily have a greater number of opportunities to speak than any other member of the House. That's the first criterion.

The second one would be the fact that in the exercise



of his or her discretion, the presiding officer would not really be undermining or subverting an existing standing order. For example, the standing order dealing with opposition days does not allow independent members to speak in the debate. So if an independent member, under a rule change that incorporated this particular draft recommendation, stood in the House and said, "I want an opportunity to speak in the opposition day debate," I think the Speaker could, in all fairness, point to the fact that we have a standing order that says independent members are not, by implication, allowed to speak in that particular debate. Presumably it would apply to other kinds of standing orders, perhaps the one dealing with time allocation. It's not intended to undermine an existing standing order. That's why the second criterion is in there, to preserve the status quo in other respects.

The third criterion applies only to standing and select committees. I think there was a consensus that an independent member who is not a permanent member of a committee should not have a better right to speak than a member, independent or otherwise, who is a member of the committee.

The fifth recommendation deals with committee membership. There was considerable debate over this particular draft recommendation and I think that you'll want to scrutinize this one the closest. There was some debate as to who exactly the independent member should approach in order to seek a permanent membership on a committee. There was also some debate as to the proportional representation of a committee if an independent member was allowed to be on a particular committee. There is a threefold step that I've drafted for your review. Basically, the situation that would develop would be that an independent member would approach either the Speaker or the government House leader or the House leaders as to his or her availability for membership on a particular committee, and perhaps even indicating a preference for a particular committee, and then it would be open for the House to incorporate that independent member's wishes in the course of striking the membership of the various committees at the outset of a new session of Parliament.

The key consideration, it seems, in 5(b) was the fact that if an independent member was going to be allowed to be a permanent member of a committee, there should be an additional government member to ensure that proportional representation was maintained on the committee. This particular draft recommendation doesn't really address the situation where an independent member is somehow removed from the committee. What happens in that case? Is the additional government member removed as well? It's not quite clear what we're going to do about that particular situation but it's something that perhaps the committee can think about in the course of its deliberations.

If you turn to the list of issues—there is a page entitled "Lists of Issues" towards the end of the document that you have before you—and look at paragraph 5 at the bottom of that page and continuing on to page 6, there are a number of issues that you'll want to consider in the course of determining the extent to which an independent

member who is a permanent member of a standing or select committee has the same rights and entitlements as other members. I've listed what they are.

1600

Some of them, I think, are fairly easy to resolve: the one dealing with quorum, motion and votes, and perhaps substitutions as well. However, the other four or five dealing with the estimates, the ability to be Chair or Vice-Chair of the committee, the appointment to the subcommittee on committee business and designated matters under standing order 125 are issues that perhaps are a bit more difficult to handle. That's why I say at the outset that draft recommendation 5 is one that is perhaps particularly difficult.

The final draft recommendation, number 6, deals with access to information. I felt that there was a consensus with respect to an independent member being allowed to have access to the same kinds of documents that opposition critics are entitled to with respect to bills and other kinds of background information.

So that is an indication of the draft recommendations.

I want to alert you to the fact that there are some general issues as well that you'll want to consider, and I've listed them in items 7 and 8 of the list of issues; namely, the extent to which the recommendations require rule changes. There are no recommendations with respect to rule changes in this draft report; there is simply a list of the recommendations proposed.

The other issue the committee may want to consider is that it may want to have a trial run of these recommendations if they're going to be implemented. It may want to indicate that if there are going to be rule changes, they should just be provisional standing orders, for example, or just in effect for a certain period of time and allow an opportunity to have some indication of how these changes would work in practice.

Those are my submissions.

**The Chair:** Okay. We have some questions.

**Mr Noble Villeneuve (S-D-G & East Grenville):** Thank you for your submissions. Independent members don't always happen at election time, and we may well have, because of party status and what have you, situations that we'll have to look at. Independents wind up coming through the life of a Parliament, and I think we should have in here when we may start out with no independents and therefore no names go into the private members' ballots, or we may have five or six, a party that may not have recognition as an official party. Would they be independents?

**The Chair:** Any other comments?

**Mr Villeneuve:** It's a question. Secondly, if someone decides to sit as an independent, whether from an opposition party or from government, do we automatically redo the draw immediately to include that independent? These independents, if they're not there at the time of the initial draw, will have been in there as part of a party. Do their names stay in line as independents if they become independents through the legislative season?

**The Chair:** May I ask a question just on that aspect? Is it not private members' hour at that particular time?



**Mr Villeneuve:** It is private members' hour, but only going to recognized parties to this point.

**Mr Sibenik:** That's correct. I guess the issue is not really a practical one at this particular time because of the fact that the independents we now have are quite far down the list of the order of precedence.

**Mr Villeneuve:** It just happened that way.

**Mr Sibenik:** It just happened that way. We were lucky, in a sense, or otherwise—perhaps "lucky" is the wrong word.

**Mr Villeneuve:** It can allow our decision to not be real imminent.

**Mr Sibenik:** Exactly. I don't have an answer for you right off the bat to that particular issue. It's something the committee is going to have to—

**Mr Villeneuve:** I think exactly, in the same vein, that if a recognized party now goes through an election and doesn't have recognized party status, ie, 12 members, are they still a party or are they all independents?

**Mr Gilles E. Morin (Carleton East):** I'd like to make sort of a general statement as far as the role of the independent member is concerned. I think the way that the member became independent should not have a bearing on whether or not the member may participate in proceedings of the House and its committees. He's a member. He represents a constituency. The member is and remains the elected representative of the people of his or her riding regardless of the fact that he or she may have changed party allegiance or become independent. He is representing, again, a constituency. Perhaps people did not vote for the MPP as a member of a particular party. Yet the point should be made that many persons in the riding did not vote for the member also, and he also represents them. So the member represents everyone.

This is why I think when we consider, when we look at changes, we should look at the role of the member, not if he is a member of the NDP, the Conservatives or the Liberals. He is a member of the House. When he debates private members' business, he represents all the electors, and this is the purpose—I've just gone through that—of the private members' hours: to bring forward issues that otherwise a member, a backbencher, would not have a chance to do. He debates it. He represents a point of view of his constituents and he represents the feeling of people whom he has approached on an issue that he feels is of concern to everyone. It's not because he's a member of a certain party that he should have a certain right to do so. He is a member.

I think this is where we have to start. He is a member of Parliament, and if our procedures only allow for parties, it should be changed so it reflects the role of the independent member. I think this is the basis of where we should start. Otherwise, we'll raise all kinds of questions—like he does, and they're good questions—because in the ballots, the three parties put in their names. Should you have a special box for the independent members when you don't even know if after two or three months they leave their party?

I think what we should do is that if that person is number 26 and he happens to represent the Liberal Party

at that time and he becomes independent, he should be number 26. What happens, for instance, during the private members' business if you have two independent members, 26 and 27? Should we prevent them from debating? I don't think so. They're members. They're bringing forward issues that are of concern to them.

I think again—I must repeat—this is the basis of where we should start. We're all equal. I know the way it is written it doesn't work that way, but we should allow for a certain flexibility to give a chance to the independent member to be able to voice his or her opinion.

**The Chair:** It might be helpful, and I'll see if the committee's in agreement, if maybe the researcher could wind up taking a look at other jurisdictions on how this works in parts of—

**Mr Morin:** He has already done that.

**Mr Sibenik:** I could say that in Ottawa it's a different situation, and in fact it's a different situation in most of the provinces. In Ottawa it's a random draw that occurs there. I was just reviewing the standing order this morning and that's what it says down there. I'm not sure that looking in any further detail at the provisions of the other standing orders in the other jurisdictions would necessarily offer us some guidance, but I'd be prepared to take another, more detailed, review of those particular provisions if that is what the committee wishes.

**Mr Morin:** Can I continue on some of the recommendations you've made?

**The Chair:** Yes.

**Mr Morin:** There is one that deals with members' statements and oral questions.

**Mr Norman W. Sterling (Carleton):** Could I make a general statement before we go on to the particulars? I agree with everything Mr Morin has said, because it's basically a statement we have stated before.

When you look at the particulars, and because our rules have been framed over the last 15 or 20 years by representatives of political parties, we face a problem here in terms of either redrafting all the rules and approaching them from an entirely different standpoint or dealing with two or three independents, which we have in the Legislature at this time. It may grow.

My suggestion is that we allow the Speaker a degree of latitude or discretion, maybe in a general statement, rather than going bit by bit through the rules and saying: "This is fair. This isn't fair." I mean, some things are obvious. In private members' hour you've got to allow an independent the same right as any other member of the Legislature, the right to participate in some fashion.

1610

Rather than try to go back and fit in the independent member, I guess until this Legislature becomes a place where independent members are there in larger numbers or are there over a longer period of time—which they have not been; this is a relatively new phenomenon to our Legislature—what's been happening seems to be working relatively well, and that is that all parties have recognized that the private member has been able to participate in some fashion.



I suggest we empower the Speaker, perhaps in a generic kind of standing order, to allow an independent member the right to participate as any other member of any other standing party would participate, and that he could be flexible with the other rules, which are basically for the parties, and that we leave it at that. Then we say to any independent member, "You can come before this committee and say you're not getting a fair shake and you would like put down in writing, in black and white, a rule which will protect you from the parties and give you a right to intervene or participate in some fashion," and leave it that way.

I think the House leaders will agree to participation in committees by independent members and will work around the rules we now have in order to allow members to become members of the standing committee. I think that will happen. I don't have the other independent members coming to me, nor did I have Mr Drainville coming to me, saying: "Norm, I'm not being allowed to participate in this process. I'm not being given a fair shake."

If we gave a generic discretion on the part of the Speaker to allow an independent member the right to participate in our parliamentary process coincident with what any other member would have in a party and left it at and then just walked away from it, we could come back if there's dissatisfaction, or if after the next election we have five or six or seven or 10 independents, or if in the next six months we have that many independents.

But by trying to fix little parts of our standing orders which were basically designed with another focus, I think we're going to run into more and more problems as we go through this. There are going to be more and more circumstances which we have not thought about or accommodated the independent member. I just don't see it as being a big problem at this time. I think everybody will work—it's basically goodwill—to allow an independent member to participate. If they don't, then if I were an independent member, I would be rising on my hind legs as often as I could to raise that as part of my platform, in terms of not being allowed to participate in the process.

**The Chair:** In a sense, you're saying if there were six independents, but it actually could be a party that ran—

**Mr Sterling:** But we're not there now.

**The Chair:** That's what I'm saying: We can't go there until we're there. In other words, we have to take what we have as independent members and where their problems are to come before this committee, and leave some discretion to the—

**Mr Sterling:** What I'm saying is that we put forward a general clause in the standing orders and say that where a member either is elected as or decides he wants to be an independent member, the Speaker shall make such accommodation to the standing orders to allow the independent member to participate in the Legislative Assembly in an equal manner to any other member of the Legislature—something like those words.

**The Chair:** Okay, we've got it down to one sentence there pretty well.

**Mr Michael A. Brown (Algoma-Manitoulin):** I have a fundamental concern with the report right at the beginning of it. That is the term "independent member." I'll tell you, I don't like the term "independent member." I think most members would be offended not to be called independent members. I think "non-aligned member" may be a far better description of their status in the House and the status in the Legislature. I don't feel that I or any member of my caucus would like to be thought of as dependent members mindlessly following whatever dictates happen to be the rule of the day. I think the term gives a false impression. I would prefer the term "non-aligned" to "independent." That's my first and most fundamental problem with this discussion.

Second, I agree with my colleague Mr Morin that each member is elected to first of all serve the constituents of his or her constituency and that we have to find some kind of method to make sure everyone has an equal opportunity to do that. I also hear Mr Sterling's comments that maybe in getting so rigid in order to do that we'll make a grand mistake, because we can't predict the future.

It seems to me a little mathematics could be used here to determine how often each of us gets to speak in the Legislature, and of course being a member of a political party does give you some advantages in that you share your time with your colleagues. Nevertheless, at a minimum, the independent should have equal opportunity to each individual member. In the case of our Legislature, that would be about one 103rd, because of course ministers of the crown cannot participate in many of the activities of the back bench. I think that could be worked out if we just put our minds to it, but in a rather more general way than in a very precise way.

**Mr David Winninger (London South):** I have a couple of comments. Before I make them, I want to ask a couple of questions of our legislative research person.

You handed out a chart some time ago, and I don't have it with me, that showed when the last independent member sat in the House prior to 1990. Do you recall when that was, approximately?

**Mr Sibenik:** It was before the Second World War. There were many more of them in the 19th century in the history of Ontario and Upper Canada, but it was before 1940.

**Mr Winninger:** My other question was about the lottery for private members' public business. As I've never attended the draw, I don't know all the mechanics.

**Mr Villeneuve:** You want to bet on it?

**Mr Brown:** You've got to go to Windsor, Dave.

**Mr Winninger:** You mentioned there are three different boxes for each of the parties. Does the Clerk choose one slip from each box in rotation?

**Mr Sibenik:** I've never attended one of these myself, but that's my understanding.

**Mr Winninger:** I'm just mindful that in the first two sessions, oddly enough, each time I drew the number 4 lot, and in the third session I drew 102, so I'm quite confident I will not have another private member's public bill in this session and maybe not in the next, depending



on the luck of the draw. Therefore, it would be a little disturbing to me that there would be an extra box for the non-aligned members, as Mr Brown calls them; I don't know what the rotation for them would be.

If you could work out a fair system that would give you a one in 103 chance, fine, but right now, if, as I suspect, the rotation goes one, two, three in each of the boxes, by the time the Conservative Party's basket is emptied and the Liberal's basket is emptied, we'll still have many more people left in the basket, because we had—well, I lost count, but somewhere in the low 70s in members. That would concern me.

**Mrs Barbara Sullivan (Halton Centre):** Sixty-nine and falling.

**Interjection:** The ministers aren't in there.

**Mr Winninger:** No, but there's just under 50, I imagine, compared to 34 or 35 for the Liberals and so on.  
1620

I can understand why a non-aligned member who wasn't elected as a non-aligned member might need to have time during members' statements to put forward announcements from the constituency. I can understand why a non-aligned member might need time during oral question period to put forward a constituency-based concern. I just question how far the mandate of a non-aligned member who hasn't been elected as a non-aligned member would go, because quite clearly, as Mr Morin said, we don't get 100% of the vote in our ridings; there are many people who vote against us who might vote for us if we declared our intentions otherwise. The mandate of such a person is very uncertain, I would suggest, and therefore I can't understand why a private member needs to participate in private members' public business and take positions, put forward certain bills, put forward certain resolutions, because I don't know where that person's mandate is coming from. They haven't been elected as a non-aligned member.

Similarly, I wonder why someone whose mandate is that uncertain would be given speaking opportunities in the House and on the standing committees. As to the process of the standing committees, there are many who have suggested that the size of our committees should be reduced, particularly those who are concerned about the expense involved in running legislative committees—the expense, for example, in having large committees travelling across the province.

I don't know why we would choose to make our committees bigger at this stage rather than keep them the same size or make them smaller. If you're adding a non-aligned member to a committee with voting rights, you would need one additional government member, and I question the need for that.

On the whole, I think there has to be a constituency-based role for a non-aligned member, but I don't think it should go much further than that unless the member has been elected in a non-aligned capacity. I note now Mr Drainville is running independently for Parliament; if his constituents decide that they don't like Reform and they definitely don't like the Conservatives and they're not partial to the Liberals, they may decide to elect Mr Drain-

ville and there will lie his mandate. I think he should have an important role to play on the public federal stage, and I don't take that away from him in any way.

But I seriously question expanding the role of the independent member beyond question period and statements in the House. I also think it's problematic from a procedural point of view. The discretion that now resides in the Speaker of the Legislature I think is sufficient in many respects to allow such a non-aligned member, where it's absolutely necessary, to participate in public debate, conceivably, and in other fora.

**Mrs Sullivan:** I was very interested in hearing Mr Sterling's comments about not getting too technical in the recommendations as they go back from committee. Frankly, I think perhaps we're overcomplicating what the issues are, as we are not asked to do a full review of the standing orders at this time. I think that over a period of time there has been a flexibility in the standing orders that reflects decisions that are made according to the culture of the place as it changes from time to time in the House. Clearly, there's a new culture and a new interest in the non-aligned members because we have more than we have had for many years.

My sense is that a general statement and direction to the Speaker that could be adopted by parliamentarians with respect to having discretion to recognize the non-aligned member in question period, in private members' statements and in private members' public business is an appropriate direction to him at this time. I am quite concerned, however, about adding a further blanket discretion to the Speaker to determine participation in committee activity, whether the member would, for instance, be counted as part of a quorum, the difficulties that are associated with substitution. I just don't think we should leave those issues to the discretion of the Speaker. However, my personal view is that we shouldn't deal with them at this time.

**Mr Morin:** We shouldn't deal with the issues?

**Mrs Sullivan:** The committee issue. The other recommendations to the Speaker are the appropriate recommendations.

**Mr Paul Wessinger (Simcoe Centre):** I've looked over the recommendations and, basically, I have problems with the committee recommendation, although the others I think are fairly much in accord with what was discussed previously at the meeting.

An issue has been raised with respect to private members' public business and I wasn't, in effect, aware of the aspect that it works on rotation on a party basis. Is it specifically set out in the rules that it works on that basis, or is that just agreement of the House leaders?

**Mr Sibenik:** It's not in the rules, so I presume it's on the basis of the party House leaders. It also could be a procedure that's been adopted at the table as well.

**Mr Wessinger:** I'll just go on record as saying that I don't like that situation. I think private members' hour should be for private members and all members should be treated equally in that respect. We should have one ballot box and all private members should draw from it. Then there'd be no problem with respect to parties or anything.



I would be prepared to recommend that and support that recommendation. I think Mr Morin would also be in agreement with that.

We have too much partisanship in our system, in any event, and I think we can ensure that this is one area where members are treated as individuals instead of being always treated as a member of a political party. I think we should emphasize it that way and I would like to give that direction as a recommendation from this committee.

**The Chair:** Ms Sullivan, you just want to make a short comment and then I'll go to Mr Sterling.

**Mrs Sullivan:** Yes. I just wanted to clarify. When I say that in my view we shouldn't be moving on the committee issues at this time, there certainly are opportunities for any member to participate in any committee and in the debate on any committee, although not in the vote and I think that's appropriate, those that are already existing in the standing orders.

**Mr Sterling:** I'm really intrigued by Mr Wininger's comments and his idea that there's some kind of difference between a person who becomes independent by being elected or otherwise. Quite frankly, I view a person walking away from a party as having a lot more intestinal fortitude than somebody staying when they disagree with a major part of the policy of a particular party. I have a lot of respect for anybody who does that because, quite frankly, it's very difficult for any one of us to get elected as an independent in this province. We haven't had an independent elected in this province in a long, long time and I dare say, even though I have been successful in five elections, even when the tide was turning against me at various times, I doubt that I could get elected as an independent myself.

Therefore, the party label is very, very important in terms of deciding my political future, and when somebody walks away from a party on a matter of principle, I don't think they should be penalized. That's basically what Mr Wininger is saying, that okay, as long as he's asking about his constituency, that person doesn't have the right to participate in debate over other provincial issues.

I disagree with that. I believe that the Legislature, in its most esoteric form, should be drawing on the expertise of the people who have the most knowledge about any particular subject. They should be involved in the debate, the questioning, whatever it is that determines what the law will be when we come out, or what the policy shall be at the end. That's the most ideal situation. I reject very strongly the idea that you're limiting an independent member, either elected or chosen after election, in terms of what he or she should be involved in.

1630

The second part is that vis-à-vis the participation of an independent member on a committee, I believe that independent members should be allowed to participate as voting members on a committee. If members feel uncomfortable about allowing that to occur in terms of the number of people on the committee, why don't we put in, in terms of a generic statement, that it will be done on the agreement of the party House leaders? That's the way

all of our committees are struck now.

Therefore, if an independent member has a particular interest in the Legislative Assembly committee, why should we say that particular member should not have the right to go to each one of our House leaders and negotiate that he can sit on this or that committee? Then the House leaders can negotiate the size of that committee so that the proper balances and proportions are set there so that a majority government continues to hold the largest number of seats on that committee.

We may, for instance, be willing to say we'll forsake one of our seats on a committee so that an independent can sit on it, or the other opposition party might be willing to do that. I would like the idea that we are being as open as possible in our framework to an independent member to be involved.

Lastly, in terms of what we call this particular individual, whether he or she is non-aligned or independent, I don't know what the best name is and I don't, quite frankly, care, but let's face it: The media, the public, everybody else accepts these people as independent members when they're not aligned with a party. If we try to invent a new name, we're only kidding ourselves. The fact of the matter is that the media are going to continue to call them independent members, and that's the way it's going to be. I don't feel strongly on that. I think it's more important that we allow them to participate in such a manner.

I would like to go with a generic statement as to their involvement, if there's more comfort in terms of the other members, in the debate, in the questioning, in the members' statements, in the other parts of the House, and in terms of the committee, to say an independent member shall be allowed to participate as decided by the House leaders of the recognized parties of the Legislature, and leave it at that. If an independent member goes to those particular House leaders, it puts them in a bit of a spot, but so what?

**The Chair:** I know as a Chair I could be in a spot. If there are three parties and one independent, how much time is given to the independent on committee? As you know, with a lot of bills that come forward, it's split equally among the three parties. With Bill 164, the auto insurance, we had a government member who asked time of the other two parties, which I granted, but it should have been government time that was taken. That's something I could see, sitting in the chair, and I imagine the two Deputy Speakers here also see problems in the House that could develop.

**Mr Sterling:** If I may respond to you, you are the Chairman and you should be able—

**The Chair:** Yes, but each Chair could wind up viewing it a bit differently.

**Mr Sterling:** So what? At least they're participating.

**The Chair:** Okay. I have to go to Mr Johnson.

**Mr Morin:** And me.

**The Chair:** Do you want to make a quick comment on that?

**Mr Morin:** I have a sense, I have a feeling that we're

taking a complete new direction now from where we originally started. We came out with all kinds of recommendations, we had long debates this summer, but Mr Sterling brings in some new ideas. I'd like to know which direction you want to take. Shall we discuss the recommendations that have been made? If this is the case, I have some comments to make. If not, then perhaps we should look at it in a totally different way, in a more open way, and not be restricted to more or less imprison ourselves in certain rules or we may regret it later on.

My only concern with giving more responsibility to the Speaker is that you're asking him to play God, and then some decision he may make at times to allow the independent member to speak or to voice his opinion may not be well accepted by the others because they'll say: "Well, look, we belong to a party. He doesn't belong to a party. The Speaker seems to favour him more often than he does others." This is where I'm worried about the responsibilities you may give to the Speaker. It's a very pressing debate.

**The Chair:** That was my point also, as committee Chair. We go to Mr Johnson.

**Mr Paul Johnson:** I note too that the title "independent member" conjures up a lot of ideas. I think clearly the members of this committee understand exactly what we mean when we talk about an independent member. However, the public may not understand that and I think it might not be a bad idea to have "independent member" defined.

It's not simply defined, because indeed people can be aligned with parties if they are independent members. For example, if they do not have enough members to attain party status, as Mr Sterling put it so well in the beginning of this meeting today, then certainly they are aligned with a party even though they are independent members or may have the status of independent members.

So I think that in the interest of our final draft that we submit to whomever we're going to submit this to—the Speaker, I guess, and all the status parties, and I suspect to the independent members as well—we define exactly what an independent member is.

An independent member, and I hope I'm all-inclusive when I say this, can be someone who has left a party so therefore no longer has the relationship with the party and therefore would be a non-aligned independent member. But a member may also be a small group of individuals. For example, maybe the Natural Law Party will have four or five members successfully elected to the Legislative Assembly of Ontario in the next provincial election, and therefore they wouldn't have status as a party, but as independent members they would certainly be aligned to a particular party. I think also members could be elected as independents. I know it hasn't happened for a long time, and I agree with Mr Sterling: It's highly unlikely that it will happen, but they truly could be elected as independents.

Therefore I think it just requires a clear definition of what an independent member is. I think the term "independent member" is well understood by us. We can call them many things, but when we say "an independent member," we mean all those members who might not be

aligned to a particular party, or indeed they may be aligned to a particular party but the party has not achieved party status here in the Legislative Assembly.

With regard to committees, I think that presently the way the committees are structured, at least the way the members of the committees cooperate, we agree to allocate time between the parties equally. Now, it's clear mathematically that the third party has the most opportunity for its members to speak, proportionally, and the second party, or the official opposition, the Liberal Party, has proportionally the next-most opportunity for their members to speak and the government party has the least. If an independent member were to have an opportunity to be on a committee, then I believe that they would probably have the most opportunity to speak, proportionally, mathematically. So it's something to take into consideration.

1640

Right now, as we cooperate and divide up the time between the parties, there is something that one might say is not fair. Well, it's certainly fair because we all agree to it. If we have an additional person, whom I will call an independent member, on the committee, they may be perceived to have an inordinate amount of time to speak to a particular issue; then again, if we all agreed that they had that time, then I guess it would be fair just by our agreement.

I think many of the concerns that are raised here—many, not all—can be solved by coming to some consensus or agreement on some kind of mathematical equation that allows these people an opportunity to participate in many of the functions that all members have an opportunity to participate in as we deal with many issues through the course of our duties here at the

Legislative Assembly.

**Mr Villeneuve:** I agree with my colleague Mr Johnson, in many instances. However, being an occupant of the chair, and I think my colleague Mr Morin, before going to occupy the chair in the Legislature, touched on it, we are giving the Speaker a great deal of power and at times possibly almost dictatorial powers. I think we have to have some sort of mechanism, because from time to time we have to ask for unanimous consent. Unanimous consent when we have independent members, if they feel shortchanged—and we were on the verge of having that prior to one of our members resigning from the Legislature.

I think we should have something known as legislative consensus. We have that at private members' hour from time to time on Thursday mornings when we come to, "Should this bill go to committee of the whole or to a designated committee of the Legislature?" We have members stand up just to indicate, without a count, and you look: Do you have legislative consensus? That would give the Speaker a much better idea about what the general consensus of the Legislature is, as opposed to having unanimous consent, whereby one "nay" kills everything.

Maybe we should look at that. It would give whoever is in the chair at that time—it would simply be a 15-second, "All those in favour of the motion by such and



such a member, please stand." If you have 98% of the people in the Legislature stand, it's obvious you've got consensus or it's obvious you don't have so-called consensus, as opposed to unanimous consent.

**Mrs Ellen MacKinnon (Lambton):** Maybe I've come in a little late on my thoughts, because Mr Johnson very much referred to what I was going to ask. Mine is really a question. It sounds to me like we are all assuming these independent members have no alliance with any political party. In our situation right now, that's not so. We have two who perhaps are being considered independents, but we know they have party alliance.

**Mr Paul Johnson:** Or allegiance.

**Mrs MacKinnon:** Or allegiance; perhaps that's a better word. Thank you, Paul. I don't know just how to word my question.

**Mrs Sullivan:** Peter North?

*Interjections.*

**Mr Paul Johnson:** They want to know which party they have allegiance to.

**Mrs MacKinnon:** Never mind, Mr Chair. I won't say any more. I obviously can't express myself, so don't bother.

*Interjection.*

**Mrs MacKinnon:** Oh, Peter North be damned. There's one member sitting out right now that I don't call independent; he belongs to our party. We know there's one sitting out right now and I know he is a member of the official opposition. If we have people sitting that way, why is there a problem in regard to committee or private members' bills or whatever the case may be? They're aligned with a party.

**Mr Winner:** Well, Peter North is a wannabe.

**Mrs MacKinnon:** Peter North should be gone south.

**Mr Len Wood (Cochrane North):** Just having come into this committee, it seems we're talking about temporary situations that exist from time to time as we go along. You've only had one independent who's ever been elected before, and that was before the Second World War, and you're talking about making rule changes or changing things to look after only temporary situations.

If individuals are elected as members, whether Liberal or NDP or Conservative, and if they feel they want to sit as an independent or switch to another party or whatever, my own personal opinion is that they should do as some members have in the past: They should resign their seat and have a by-election.

Rather than changing the rules here for independent members who are only temporary—"temporary" might be a year, it might be less than a year or it could be several months—I don't think we should be worrying about those particular rules because of the fact that it's only happened once that a member ever got elected as an independent member.

Every election you're starting with a new slate. There probably are going to be hard feelings from time to time and members are going to decide that they would like to switch to another party or sit as an independent, but I don't think we should worry very much about these

situations unless they are elected as independents. If they want to switch from one party to another, my opinion is that they should resign their seat and have a by-election.

**The Chair:** I agree with you, Mr Wood, but sometimes they get caught in the middle of the floor and can't get to either party.

**Mrs Sullivan:** As we're looking at how we're going to shape the final report, I think we should be mindful of what we were asked to do. The committee was asked by the Speaker to provide guidance to him to deal with the current situation, at the request of more than one independent member who came before the committee to express their views about what their role should be as it evolves in the House.

That's why I favour Mr Stirling's general statement of principle to put forward to the Speaker in terms of the involvement of the independent member in the activities of the House. My view is that until there is a full review of the standing orders which could consider the intricate areas of committee membership and participation, we should not provide further power to the Speaker to exercise discretion in terms of committee participation.

Currently, if the discretion is exercised from time to time, as it is in Ottawa, on members' statements, during the oral question period, in private members' public business and in debate on motions in the House and in committee, I think that's appropriate. If it's not appropriate, you can bet that this committee will have a reference right back to it for additional recommendations.

**Mr Sterling:** Can I narrow the discussion? I'm getting a sense from the government side of where they're standing on the issue. I'm quite willing to put a motion, if that's necessary, that we either take one tack or the other. I move—

**The Vice-Chair (Mr Paul Wessinger):** Would you mind if I asked a question from the researcher with respect to clarification of these recommendations? I hope you don't mind.

**Mr Sterling:** No, that's fine.

**The Vice-Chair:** Which of the recommendations would require rule changes in items 1 to 6?

1650

**Mr Sibenik:** It seems to me that 1 would require a change, and 2 would because of the way the particular standing order 33 is phrased, and I think 3 would require a rule change as well. If you want to give some guidance to the Speaker or the presiding officer with respect to speaking opportunities, that possibly can be a rule change as well; committee membership is another; in fact the sixth one as well, if you want to give independent members the entitlements or rights that other members have.

**Mr Sterling:** Mr Chairman, I move that in giving guidance to the Speaker as to the role of the independent member, one generic rule be drafted for our standing orders which would allow the Speaker discretion to permit the independent member to participate in the legislative process as any other member of the Legislature might do.

**The Vice-Chair:** Discussion on the motion?

**Mr Sterling:** I think it's best that we deal with this in a generic form rather than going through various points and amending six, seven, 10, 15 different parts of the standing orders. Therefore, I move that we deal with the change to the standing orders in a generic form rather than in specific recommendations to each and every part of the standing orders.

**Mrs Sullivan:** I'm going to take a little different tack, but I still think that what Mr Sterling has suggested is interesting. I'm going to suggest that the committee recommend items 1, 2, 3 and 4 with a slight changing in the wording from "should" to "may" and from "should" to "shall" in the appropriate lines. I'm not really speaking to this, but I guess still in general discussion.

I also think the recommendation to the Speaker, as the Speaker does not make these changes independently, should be that this matter be raised with the House leaders for their consideration and for bringing forward to the House for recommendations for change to the standing orders in the normal way. The government House leader brings in the recommendations for change to the standing orders. We know that has generally been done by consensus, although not always.

Perhaps the Deputy Speaker or the Clerk can tell us if a motion of the House with respect to the kinds of recommendations that are here in 1, 2, 3 and 4 are adequate for the current period of time.

**Mr Sibenik:** An order of the House of course is effective. It can amend these standing orders, so there's no difficulty in terms of a simple order of the House amending the standing orders. Also, you can have an order that actually amends each standing order as well. There are various ways in which this can be done. There's no difficulty in that sense, though, from a procedural perspective.

**Mrs Sullivan:** I was thinking of process first, but in speaking directly to Mr Sterling's motion, we would prefer to leave out the committee participation at this time, so the portion of your motion that says "as any other member" we couldn't support.

**Mr Sterling:** It's a little difficult, because I haven't written the motion out. Therefore, maybe the clerk can help me, because I think you're referring back to my—

**The Vice-Chair:** I'm just wondering, if you're trying to sort out an appropriate motion, maybe there's some further discussion on the matter.

**Mr Winninger:** Just a couple of comments on Mr Sterling's motion: As I see it right now, there's nothing to stop the House leaders from agreeing, at the request of a non-aligned member, to have time during debate.

**Mr Sterling:** Yes, there is.

**Mr Winninger:** There is? What rule is that?

**Mr Sterling:** I can stand up on a point of order and say that you have no right to allow that independent member the right to speak.

**Mr Winninger:** But the Speaker may rule adversely on your point of order.

**Mr Villeneuve:** No, you've got to go by the standing orders.

**Mr Sterling:** I'd have a valid point of order.

**Mr Winninger:** The other concern involves sitting on a committee. If there were a permissive rule that allowed a member of the opposition parties to yield their seat on a committee and to allow a non-aligned member to take their place, and the House leaders approved of that, that would seem reasonable to me.

But I said the last day I sat on this committee, which is quite a few weeks ago, given the amount of obstruction getting bills through the House and the fact that it's taking us, on average, two and a half times what it took previous governments to get their bills through—and Mr Sterling said, "That's because we don't like your bills"—why would we want to add to the debating time by increasing opportunities for non-aligned members to increase the length of the debate? It doesn't make a lot of sense to me as a government member. It might make more sense to the opposition parties now that they're no longer in government.

**Mr Sterling:** Let me get the motion straight so that people know what they're voting on. I moved that we make our recommendation to the Speaker in a generic form rather than in a specific form with regard to the standing orders. Do you understand what I'm saying by that? I see some looks of puzzlement.

**The Vice-Chair:** Do you have a trial period for this, what you were talking about earlier?

**Mr Villeneuve:** We want to see some recommendations first.

**Mr Sterling:** Yes. Basically, I'm saying I would prefer to send our researcher back and say, "Come to us with some kind of general discretionary power." That's what the essence of my motion is meant to be, to have the researcher come back with some generic discretionary power to the Speaker to allow an independent member to participate in the legislative process, rather than going through and trying to say, "We should permit him here and there, and here and there," and then see how it works out. Then if there's a problem, either on the part of the party leaders or in terms of the independent member, we'll hear about it and we'll have to revisit this again.

I just think we're trying to deal with a problem that isn't that big. I don't think we can foresee all of the instances that can arise where a Speaker might want to exercise discretion either in allowing an independent member to participate or to keep an independent member quiet at certain times. This is rather than speaking to individual sections of our standing orders.

1700

**The Chair:** Discussion? Mrs MacKinnon.

**Mrs MacKinnon:** First of all, Mr Chair, perhaps you might want to decide whether or not you want me to speak, because you're asking me to speak to the motion, is that correct?

**The Chair:** Discussion.

**Mrs MacKinnon:** In regard to the motion? My point in putting up my hand was that I wondered if it would be helpful to read into the record the motion that Mr Charlton made in the House regarding the activity around this particular issue, because I kind of feel from reading



it—I have a copy of it here—that we might be going just a little bit further than his motion directs.

**Mr Winninger:** Why don't you read it anyway?

**Mrs MacKinnon:** I'm asking the Chair if he wants—

**Mrs Sullivan:** It's at the direction of the committee.

**Mr Villeneuve:** Let's put it on the record.

**Mrs MacKinnon:** "Mr Charlton moves:

"That the standing committee on the Legislative Assembly be directed to consider the role of members of the provincial Parliament who are not members of a recognized party;

"That the committee give particular attention to issues relating to non-aligned members posing oral questions, making members' statements and participating in the standing committee process; and

"That the committee in its deliberations consider the rights of all members and the practices of other jurisdictions."

I don't see anything in that motion that says that we're to be dealing with private members' public business. I recall the legislative researcher coming back with practices from other jurisdictions, so we have done that, but I'm wondering if we're going beyond the bounds of this motion. Or am I jumping to conclusions?

**The Chair:** Could I have the clerk just go on the record for a minute here.

**Clerk of the Committee (Ms Lisa Freedman):** I just want to clarify something. I'm not convinced, and I just want to check for a moment, whether or not that motion was ever passed in the House. So before you start discussing that motion, can you give me just a second to check back with the books to see if it was actually passed?

**Mrs MacKinnon:** Oh, all right. Sure.

**Mr Sterling:** Mr Chairman, just on a point of order: Quite frankly, it doesn't matter. This Legislative Assembly committee has the right to recommend anything it wants to recommend, regardless of what we've been told. We're trying to deal with the independent member's role and how we would fit that particular individual into our legislative process.

The thrust of my motion is, do you want to do it specifically by dealing standing order by standing order and figure out what we're going to do or do you want to give discretion to the Speaker to allow them to participate in some fashion which is in accordance with what the rest of the members have in terms of rights and privileges in the Legislative Assembly?

**The Chair:** Which the Speaker has dealt with to date, in a sense.

**Mr Sterling:** Yes, that's right.

**Mr Wessinger:** I have some objection to the generic approach, because I'm concerned about the inclusion of the committee membership in a generic approach. My second objection to the generic approach is that I know one of the problems was that, as membership of the committee changed, it seemed we had arrived at a relative consensus of the then members of the committee with

respect to certain items. Those items were, as I said, items 1, 2, 3, 4 and 6. I would agree there's been no consensus with respect to the whole question of committee membership, but it seemed to me that there was consensus on members' statements, oral question period, private members' public business, speaking opportunities in the House—maybe that one, but certainly on the first three there was a consensus.

If we want to word it as a recommendation to the Speaker, I would much prefer that approach because it's what I felt I had agreed on previously here in the committee. Going off in a new direction, I have some concern and I also have some sympathy for those people who act as Speaker. They need some direction as to how they're going to exercise their discretion. That's certainly the point that's been made by Mr Morin and Mr Villeneuve. For that reason, I'm not really in favour of going off on another generic tangent.

**Mr Winninger:** I think Mr Wessinger has made some of the submissions I was going to make. I said earlier I don't have a problem with members' statements, I don't have a problem with oral question period. If indeed non-aligned members are going to be allowed time during private members' public business, there would need to be some changes as to how the lottery operates, to ensure fairness, but it seems to me that the role of a non-aligned member on a committee and speaking opportunities in the House would be highly problematic.

Unfortunately, I wasn't there to measure the consensus before the committee recessed last time, so I'm just going on the basis of what I heard there was consensus on before I left the committee. I don't support the generic approach because I don't think there's consensus around all of the changes to the standing orders that the generic approach would entail.

**Mr Sterling:** I guess I have more faith in the Speakers than most people here in terms of their discretion. One of the things we have done in drafting our standing orders in the past is not give enough discretion to our Speaker. Unfortunately, I've heard from the Speaker far too often, and my own humble opinion is, that instead of ruling and having the flexibility to rule what would be reasonable and rational at the time, we've hamstrung the Speaker with a whole bunch of specifics, and we continue to do that.

Notwithstanding that, I withdraw the motion and I suggest we move along on the recommendations piece by piece at this time.

**Mr Villeneuve:** If it looks like our motion is not going to carry, let's get the job done and let's go.

**Mr Wessinger:** Just as a suggestion, perhaps we should move each item. I'll start off where there seems to be no problem. I'll move items 1 and 2 for approval.

**The Chair:** Discussion?

**Mrs Sullivan:** I had indicated that I was concerned about a couple of the words in this: "should" and "the Speaker should." I think "may" is a more appropriate word when we're talking about discretion. Then latterly, in the third line from the bottom, have, "The Speaker shall have regard to the opportunities that members of the

recognized parties have to make such statements." Those changes should follow through each section.

**Mr Sterling:** I agree with that. On number 1, I think there should be a statement in here that the independent member should give prior notice to the Speaker of his desire to make a statement.

**Mrs Sullivan:** "His or her."

**Mr Villeneuve:** We haven't got any "hers" yet.

**Mr Sterling:** All the independent members are "hises."

**Mr Villeneuve:** Yes, all the independent members are males right now.

**The Chair:** You're saying prior notice. That would be before the House actually sits at 1:30; it wouldn't have to be—

**Mrs Sullivan:** Or just advise the Speaker.

**The Chair:** Just as long as he knows that the person is standing up that particular day.

**Mr Sterling:** If you say, "one independent member," you've got a problem.

**The Chair:** Okay. Nothing in number 2? Everybody agree? Does everybody agree with number 1 now, with the changes from "should" to "may"?

**Mrs MacKinnon:** And "should" to "shall" in the second-last line.

**Mrs Sullivan:** And the prior notice. The clerk's doing all of our motions for us, I guess.

**The Chair:** Number 2, oral question period: Any discussion, changes?

**Mrs MacKinnon:** Where do you mean the act of prior notice to go, with 1?

**Mrs Sullivan:** Yes. Also, I would suggest that the same addition be made to oral questions as well.

**Mrs MacKinnon:** That was why I asked. I was putting it on oral questions, but you put it on members' statements, right?

**The Chair:** We did number 1; we're on number 2 now.

**Mr Wessinger:** It's the same: "the Speaker may."

1710

**Mr Winninger:** Is that prior notice going just to the Speaker, not to the other recognized parties?

**Mrs Sullivan:** Yes. In a way, it's a protection for the Speaker.

**Mrs MacKinnon:** There's a second "should" in 2: "The Speaker should have regard to the opportunities." Should not that be "the Speaker shall have regard" again?

**The Chair:** It's "shall" again, yes.

**Mrs Sullivan:** I think all the way through we've agreed that those changes should be made.

**The Chair:** The researcher would want to know whether we want "recognized" in 1, in the second-last line: "The Speaker shall have regard to the opportunities that members of the recognized parties have to make such statements."

**Interjections:** Yes.

**The Chair:** Okay, on to 3. I guess this is where we start again.

**Mr Wessinger:** I don't know whether I'll get any support for this, as Mr Morin's not here, but I'd like to include in number 3—I don't know how to do it—the recommendation that all private members who are not members of the executive council be considered equally in one draw.

**The Chair:** That's quite a change.

**Mr Wessinger:** Yes, I know it's a change, but I believe in it, so I'm moving it.

**The Chair:** Discussion on it?

**Mr Sterling:** I think we're going to get ourselves in trouble if we start fooling around with other standing orders than those dealing with independent members, and that's what we are here.

**Mr Wessinger:** I'd like to point out, as it was pointed out by researchers, that there's nothing in the standing orders that requires the way it is now.

**Mr Sibenik:** If I could just clarify that, actually there is an expression in standing order 96(d) that does say "for each party." If I misled the committee earlier, I apologize for that. It does say that there is a specific way, and that's why I said there are three boxes, because that's in a sense what the standing order 96(d) does say.

**Mrs Sullivan:** And members themselves choose to participate.

**Mr Wessinger:** I think I will stick with my motion, because I'm exercising my judgement as an independent member today.

**Mr Brown:** Not non-aligned; independent.

**Mr Wessinger:** That's right, thinking independently.

**The Chair:** Further discussion on this?

**Mr Sterling:** Mr Chairman, I think it's out of order in terms of the discussion we're having today. If you want to go into other realms of the standing orders and start discussions about that, I think you're going to lose credibility in terms of the total report. That's the way I feel.

**Mr Winninger:** I don't really understand how we can shake up the pot without shaking up the pot here. Clearly, there has to be—

**Mr Sterling:** I'll tell you how.

**Mr Winninger:** Wait. Let me finish.

**Mr Sterling:** I'll tell you how. It's simply a mechanical problem, and you can deal with it.

**Mr Winninger:** I'm asking this because I think Mr Wessinger raises a very valid point: Is there going to be a fourth box, or are we changing the manner in which we draw the lots?

**Mrs Sullivan:** You don't have to worry about that. That's somebody else's job.

**Mr Winninger:** I would ask for clarification about why we don't need to worry about that.

**The Chair:** Mr Sterling's response.

**Mr Sterling:** All you have to do is put everybody's name in the box, one box, and you agree that on each



day it's going to be a government member first, so you choose until you get a government member, and you then you choose until you get an opposition member, and you then choose until you get a third-party member. Eventually, you're going to choose the independent member and he or she gets slotted wherever they fall. There's no problem there.

**Mr Winninger:** Where does "eventually" fall for the non-aligned member?

**Mr Sterling:** Wherever they draw.

**Mr Brown:** It sounds like a moose lottery to me.

**Mr Wessinger:** Perhaps in the interests of expediting the matter, although I like my proposal and I do support it, I will withdraw my motion.

**Mr Paul Johnson:** Notwithstanding that, I still want to make a comment about private members' public business. Peter actually brought up the notion when he was explaining it that there would need to be a mathematical formula that would, fairly, allow an independent member from time to time to have an opportunity for private members' public business. I think he's right.

You need to have those three boxes, like we're doing, to arrange for members of recognized parties to have their fair opportunity to avail themselves of private members' public business. Then, after a period of time, from time to time there is an opportunity for an independent, based on however many independents there are. If there's one, then it would be considered fair, I think, to allow that person an opportunity after the time period when we all get on the roster to have an opportunity to do that.

It becomes more complicated when we have more, and therefore there would have to be a mathematical formula to allow that to happen. They too would be in a draw and may or may not have success, I think. I know that sounds somewhat complicated, but I'm certain there is a formula that can be arrived at we can all agree to.

**Mrs Sullivan:** The ballot is conducted by the Clerk with each member who wants to identify himself or herself as interested in participating in a private member's motion or bill, putting their names forward to participate in the ballot. Every member does not have to participate. Some independent members may not, just as some party members do not, choose to participate.

The Clerk has, not only in this jurisdiction but in other jurisdictions, been responsible for conducting the ballot for private member's business. I suggest that we leave the process of conducting the ballot to the Clerk and get on with the principle which is expressed in paragraph 3.

**Mr Brown:** I have a question of the researcher. I don't have a great understanding of how many members actually do present bills or resolutions to the House in an average session. Would 50 members have an opportunity?

**Mr Sibenik:** Right now there are 100 members on the order of precedence and we are at—

**Mr Sterling:** Forty?

**Mr Sibenik:** Well, if it's October 21, we're at number 29. If we go to December 9, it would be 42 in all.

**Mr Brown:** I was just attempting to get some under-

standing of how important it was to be lucky in the draw. What we're saying is that about one third, at best one half, of the members who wish to participate actually have an opportunity to do that.

**Mr Winninger:** We had a government member in the room earlier just observing the proceedings. She told me she's never had a chance to present in private member's hour and her current ticket is 86. It would seem to me that if you're in a recognized party, your opportunities to participate in private members' business should be at least equal to that of a non-aligned member.

I don't know that there's an easy solution to this. Maybe the mathematical formula we described earlier—quite frankly, I could never understand why, once you've drawn a lottery, your number should die at the end of a session; why your number, as you're still with your party or we're still in government, can't continue into the next session. But be that as it may, it seems to me that you could have opportunities for non-aligned members that a private member in a recognized party is denied.

**The Chair:** Mr Winninger, I don't know if you've seen that some of the members have actually switched with other members, so if you're number 89, you can switch with someone who's already presented, and it's announced in the House that the two members are switching.

**Mr Winninger:** Yes, that can happen.

1720

**Mrs Sullivan:** I wanted to once again say that I think the process should be left to the Clerk. In other jurisdictions, there is not the same kind of approach we have, where a member can participate in a ballot with or without materials prepared and ready to go. In many other jurisdictions, you must participate in the ballot with a piece of legislation that you intend to bring to the floor, and then there's a judgement made about the public good associated with that legislation by an all-party committee or whatever. Sometimes it's simply by draw.

But we are not talking about alternatives to the ballot system and to the process for private members today; we are talking about making a recommendation about how those people who are currently independents can or whether they should participate. My view, and I think Mr Wessinger has said it, is that there appears to be consensus on subsection (3), so I suggest we have a vote.

**Mr Sterling:** Can I say one thing? The other part of this debate is that once you get into the debate about how the ballot is done, the determination of how that happened in the past was part of a negotiation process between the government and opposition parties. Part of the government's giving was to say that opposition members are going to have a greater right to private members' hours than backbench members of the government are going to have a right to.

**Mr Paul Johnson:** And they do.

**Mr Sterling:** They do. You may disagree with that, but you can't change rules in isolation, in terms of the balance between government members and opposition members, without talking about a whole bunch of other things. You've heard about the 30-minute speech; we

never had restrictions on speeches before this particular government brought that part in. It's a fluid process that takes place at that time, so for us to come up and say we're going to recommend a brand-new way of dealing with who asks questions—I mean, when I was a member of the second party, I always felt very, very strongly that members of the third party, which was then the New Democratic Party, from 1985 to 1987—we had 51 members in our group and I think the New Democrats had 21 or 25; it doesn't matter. I always thought, why should they have twice as many questions as we have? That was the way it was negotiated, and that's the way it is.

When you look at one rule, does it necessarily reflect what the standing orders in total are about? In total, they're supposed to be a balance between the right of the government to govern and the opposition parties to oppose, and they've been negotiated a number of times. I don't know what the payoff was on this particular one when it was negotiated. You'd have to go back in history and look.

**Mr Paul Johnson:** We all studied mathematics in high school and I'm sure we all studied probability, and any of us who have studied probability and understand it would certainly never gamble—let me make that comment—but the probability right now of a third party member getting into private member's public business is greater than is the Liberal Party, the opposition, and far greater than members of the government. If indeed we're going to allow independent members an opportunity to private members' public business, as I examine this, it would almost be a certainty that they would have an opportunity to do that.

**Mr Sterling:** Not necessarily.

**Mr Paul Johnson:** But it would be closer to a certainty, given the mathematical probability. There's only one of them and they're going to have a greater number of opportunities.

**Mrs MacKinnon:** Sure. They're going to be fourth the very first time.

*Interjection.*

**Mr Paul Johnson:** Norm, if I may—do I have the floor, Mr Chair?

**Mrs Sullivan:** On a point of order, Mr Chair: I have a question.

**Mr Paul Johnson:** May I complete what I have to say?

**The Chair:** Go ahead, Mr Johnson, quickly.

**Mr Paul Johnson:** If we are going to allow the three parties to draw from three individual boxes as they do, then given the numbers, the probability of success for a third party is greater than for the official opposition and far greater than for the members of the government. If we're going to make a fourth box that we put independents into and that we draw from, the probability of them being successful is far greater than anyone else. If we're going to do this in the way we're doing it, then that has to happen.

**The Chair:** Or you can put it in the third-party box also and that would even it out.

**Mr Sterling:** You can put them all in one box, as I told you before.

**Mr Paul Johnson:** But there's only one independent member in the fourth box.

**The Chair:** No, you put him in the third party's box.

**Mr Sterling:** On number 3, is there any objection from the governing party? I don't have any objection to the recommendation on participation of the private members.

**Mrs MacKinnon:** I thought Mrs Sullivan had a point.

**Mrs Sullivan:** No. Once Mr Wessenger said he wasn't going to go on proposals for changing the ballot, I'm in full agreement with this.

**The Chair:** As it is in number 3?

**Mrs Sullivan:** Yes.

**Mr Brown:** Just to be consistent, I think we should put in that clause about notifying the Speaker in advance that one would wish to speak.

**Mrs Sullivan:** They would participate in the ballot, so they wouldn't have to.

**Mr Sterling:** No, no, in speaking.

**Mr Brown:** In speaking. It provides for the opportunity to speak, and I think it's only fair to the Speaker that he knows he should be recognizing someone.

**Mrs Sullivan:** Yes.

**The Chair:** So everyone's in agreement with 3 now?

**Mr Winner:** With 3(b). Mr Chair, if some recommendation is made around 3(a), I think there has to be a recommendation with regard to the process, because we're recommending in essence that this standing order be changed. If there is a process in 96(d), I believe we were told, and our recommendation would change that process, I think we need to have some recommendation around the process to meet the kinds of concerns that I and other members have expressed, that you just heard from Mr Johnson.

We know quite clearly that right now in the average session there's not enough time for all members to conduct private business. We know that the probability of a government member conducting private business is marginally or substantially less than the other two parties. We know, given that there's not enough time for all members to conduct business now, there's going to be even less time if three additional non-aligned members conduct business in a session. Therefore, I'm very concerned that there be a reasonable, acceptable formula that goes along with this recommendation in 3(a). If there isn't, then I would suggest our government members caucus.

**Mr Wessenger:** Can I make a suggestion here?

**The Chair:** Wait a minute; Mrs Sullivan's got the floor next.

**Mrs Sullivan:** I was going to suggest that the same direction to the Speaker to have regard to the participation of members of recognized parties be put under subsection (a) as well as under subsection (b), and that may solve the problem. He will understand that there is a concern.



**Mr Sterling:** I think you're going to cause more problems, because the rights—

**The Chair:** Mr Wessenger, and then I'll catch you.

**Mr Sterling:** I'm sorry; I was just speaking on her suggestion.

**Mr Wessenger:** I have somewhat of an interest in what Mrs Sullivan said. Perhaps this is one we need a further, more specific recommendation on so we can approve it in principle subject to a satisfactory process being agreed to by the committee. I'm just trying to short-circuit the situation here, but I think we need somebody to come back with some recommendations about the process, having regard to the standards of not lessening the rights of other members in an unfair manner, as Mrs Sullivan had indicated. I think that's the best way.

**The Chair:** So we leave 3 until next week?

**Mr Wessenger:** With the recommendation, yes.

**Mr Brown:** Can we stand it down, Mr Chair?

**The Chair:** We can stand it down. Mr Sterling had some comments.

**Mr Sterling:** The problem with this one is that the rights of members are not consistent.

**The Chair:** All members, you mean.

**Mr Sterling:** Yes. The right of a Conservative member in the Legislature to ask a question or to do private members' public business is greater than a Liberal, which is greater than an NDP member, just because of the balance we have in the House.

**Mrs MacKinnon:** I'm wondering if we should be considering having the Speaker or the deputy speakers in when we're considering this, if they might be able to shed some light on it, inasmuch as we are going beyond what the original motion said. We haven't got the advantage right now of having either of the deputy speakers. Have you been a Speaker, Mr Sterling?

**Mr Sterling:** No. I just ran for being Speaker.

**The Chair:** Ms MacKinnon, that motion you read out had never been passed in the House.

**Mrs MacKinnon:** I didn't realize it would have to be a motion.

**The Chair:** This committee has to take the direction back to the Speaker.

**Mrs MacKinnon:** That's what I'm saying. Could we not do that, take the direction back to the Speaker that we would like his or her or their guidance on it?

**The Chair:** We'll be making the decisions here to go back to the Speaker.

**Mrs Sullivan:** The Speaker wrote us a letter that said, "Will you look at this?"

**Mrs MacKinnon:** But not on this particular subject.

**The Chair:** He's asking us to make recommendations back to him. I think the only thing we can do is stand this down until next week, at 3:30 on Wednesday. This committee is adjourned.

The committee adjourned at 1732.







## CONTENTS

Wednesday 20 October 1993

<b>Role of the independent member</b> . . . . .	M-95
Peter Sibenik, procedural research clerk, committees branch, Office of the Assembly	

### STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

- \***Chair / Président:** Hansen, Ron (Lincoln ND)
- \***Vice-Chair / Vice-Président:** Wessenger, Paul (Simcoe Centre ND)  
Dadamo, George (Windsor-Sandwich ND)
- \*Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)
- \*MacKinnon, Ellen (Lambton ND)
- \*Mathysen, Irene (Middlesex ND)  
McClelland, Carman (Brampton North/-Nord L)
- \*Morin, Gilles E. (Carleton East/-Est L)
- \*Sterling, Norman W. (Carleton PC)
- \*Sullivan, Barbara (Halton Centre L)  
Sutherland, Kimble (Oxford ND)
- \*Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)

*\*In attendance / présents*

#### **Substitutions present/ Membres remplaçants présents:**

Brown, Michael A. (Algoma-Manitoulin L) for Mr McClelland  
Wininger, David (London South/-Sud ND) for Mr Sutherland  
Wood, Len (Cochrane North/-Nord ND) for Mr Dadamo

**Clerk / Greffière:** Freedman, Lisa



C17011  
XC70  
-170

Publications

M-10



M-10

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 27 October 1993

# Journal des débats (Hansard)

Mercredi 27 octobre 1993

Standing committee on  
the Legislative Assembly

Comité permanent de  
l'Assemblée législative

Role of the independent member

Le rôle du député indépendant

Chair: Ron Hansen  
Clerk: Lisa Freedman

Président : Ron Hansen  
Greffière : Lisa Freedman



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



# LEGISLATIVE ASSEMBLY OF ONTARIO

M-111

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 27 October 1993

The committee met at 1541 in committee room 2.

### ROLE OF THE INDEPENDENT MEMBER

**The Chair (Mr Ron Hansen):** We'll resume the hearings. This is the standing committee on the Legislative Assembly and we're discussing the role of the independent member, if the researcher will just give us a recap of where we were last week and where we're going today.

**Mr Peter Sibenik:** Perhaps just before going into that, I could explain the document that is currently before you. It's historical statistics on the number of independent members in Ontario. I indicated the last day that the last independent member to be elected to the assembly was before the Second World War, and in fact the actual date was 1923. However, I should indicate as well that there are a number of what I call, for want of a better expression, hybrid independents, independents who are referred to as Conservative Independent or Liberal Independent or Progressive Independent. The last such hybrid independent to be elected to the assembly was in 1955, according to the statistics.

I just provide that for your information because it was raised the last time the committee met.

To go over the recommendations, there were six items in the draft report and we got through the first two, namely, members' statements and oral question period. All that was changed in these two recommendations was that the word "should" was changed to "may" or "shall," as the case may be, in both draft recommendations 1 and 2. In addition, there was the change to the notice provision, the prior notice to the Speaker. That was the additional change to those two.

We are, I believe, now on item 3, which is private members' public business. With respect to this particular draft recommendation, of course, there's really a twofold approach that the committee may want to take, and that is, first of all, the situation of the independent member who wants to participate in the ballot for the purposes of moving a motion; that is one issue. Then the other issue is the independent member who seeks to participate on another member's ballot item, and that one can be perhaps a bit more contentious. However, I have provided some wording that the committee may want to consider. I will just leave it at that.

**The Chair:** Comments? Any discussion?

**Mr Paul R. Johnson (Prince Edward-Lennox-South Hastings):** At the last meeting, just to refresh my memory, all the members of the committee agreed that members' statements and oral question period were areas where we would recognize independent members. Is that correct?

**Mr Sibenik:** Yes.

**Mr Norman W. Sterling (Carleton):** On 3, we had mentioned, I think, that originally the intent on private members' public business was to have the Speaker extend

the time allocated for speeches by five minutes at the end of the day. Is that included in this?

**Mr Sibenik:** Yes. It's in 3(b), actually, with respect to independent members who wish to participate in another member's motion. With respect to an independent member who wishes to participate in his or her own motion, there are the provisions in standing order 96(c)(i) and (iii). In that situation, the independent member has 10 minutes at the outset and a two-minute reply but no intervening time. In a sense, the independent member may be in a slightly disadvantageous position because all members of recognized parties have that opportunity, in the context of their party's own time, to participate a second time.

**Mr Sterling:** No, that's not what I'm talking about. I'm talking about the fact that there are 10 plus two for the initiator of the resolution or the bill, the proponent of the bill, and then there are 15 minutes per party as you go around the rotation. That makes a total of 57 minutes.

**Mr Sibenik:** That's right.

**Mr Sterling:** When the five minutes come in, I think it was the intention of the committee when we discussed this during the recess in September that that time be extended to 63 minutes. Is that included in here?

**Mr Sibenik:** I believe it is in 3(b)(i).

**Mr Kimble Sutherland (Oxford):** Is that at the conclusion of the rotation?

**Mr Sibenik:** That's right, for up to five minutes.

**Mr Sterling:** But there is no restriction in the existing standing orders as to when the Speaker must cut off—this is not in conflict with another rule?

**Mr Sibenik:** Well, it would be—

**Mr Sterling:** These are recommendations, okay? I would rather that when we take these to our House leaders, our caucus or whatever, it be very, very clear as to what's going to happen. Therefore, I think that even if it's not necessary to put the extra five minutes there in a technical manner, it's important that we show it in the report.

**Mr Sutherland:** If I may, it does say that. In 3(b) it says five minutes. It starts off, "At the conclusion of the rotation," so that's implying it's going to be in before. I don't know how you can assume anything else other than it's going to be 63 minutes or 62 minutes.

**Clerk of the Committee (Ms Lisa Freedman):** I have just one comment in respect to what Mr Sterling said. The only other standing order you could be conflict with is that all the questions have to be put at 12 noon.

**Mr Sterling:** That's right.

**Clerk of the Committee:** Depending on points of order or quorum calls, where the clock doesn't necessarily stop, you could lose the five minutes for the second person if we're already at 12 noon and those five minutes have yet to be allotted to the independent member. That

would put you in conflict with standing order 96(f).

**Mr Sterling:** Or you get to 12 noon and the Speaker hasn't put it because he's got pushed back because of the interjection of the five minutes and then somebody raises a point of order and says, "Mr Speaker, you can't put the question; that's out of order," and I presume it would be out of order, because we've frozen ourselves in on noon.

**Mr Sutherland:** I'll remember that. But it could be done now, correct? Right? We somehow get past 12?

**Mr Sibenik:** I would imagine that there could be some redrafting done to take that into account. If the committee wishes me to do that, I will in fact do that so that there is that five-minute opportunity.

**Mr Sterling:** I'm just concerned about the explanation part of it, so that everybody, when these are put in front of them, understands that the time is going to be expanded a little longer and it may go past 12 noon; it may be 12:05 or whatever it is when we get out of there.

**The Chair:** Any other concerns, comments?

**Mr Sterling:** I agree with it.

**Mr Sibenik:** Just before we leave this particular recommendation, I think I should redraw to the attention of the committee that there may be a difficulty with respect to the balloting, how an independent member is supposed to be chosen for the purpose of the ballot.

Right now, as was mentioned the previous day, there are three ballot boxes at the beginning of each session and a name is picked from each box in rotation, starting with the government side. This particular recommendation, 3(a), does not solve that problem, so I just want to flag that for your attention again, because it will develop a problem.

1550

**Mrs Barbara Sullivan (Halton Centre):** I think we did discuss this aspect at the committee meeting last week. My sense is that the balloting process is not specified in the standing orders per se, that the particular procedure that's followed is one that has been adopted by tradition. The Clerk, who is the chief official of the Legislative Assembly, conducts the ballot, and if a different process is required in order to enable an independent member who wants to participate in the ballot to do so, then the Clerk should design another process that's fair and that takes into account those independent members who wish to participate. We don't have to belabour that at this committee.

**Mr Sutherland:** That's fine. I thought I had heard someone suggest that they could go into the lowest party, the third party, whatever, whoever has the lowest number; you just put it in that box with them so it has the same chance as the rest of those people do to come up on the ballot.

**Mr Paul Wessenger (Simcoe Centre):** I would agree with Ms Sullivan's recommendation. It's something the Clerk can surely work out, or the House leaders. It's not part of the rules now, so I don't see a problem. We can leave it to be worked out.

**Mrs Ellen MacKinnon (Lambton):** I was going to say basically the same thing as Mr Wessenger said, that

Mrs Sullivan's recommendation is by far the most fair one and perhaps even the most legal, if indeed legalities come into it.

**Mr Sibenik:** The difficulty that the table has currently had with the balloting process and changing it is the fact that the wording in standing order 96(d) tends to be a bit on the restrictive side. Maybe I should just read into the record standing order 96(d): "The order for consideration of the items of business for each party shall be determined by a ballot conducted by the Clerk prior to or at the commencement of each session in which all private members may enter their names for the draw."

The first part of that standing order says, "for each party"; then in the second half it says, "all private members." That has been a source of confusion and I'm not sure, unless there is some kind of explicit instruction from this committee, that the problem will be resolved.

**Mrs Sullivan:** The Clerk might want to review precedents that have occurred where parties without official standing in the Legislature have been able to participate in the ballot for private members' business, and the independents, as a conglomerate, could be deemed to be a party for purposes of the ballot. I'm sure those precedents exist in terms of those parties that have not had adequate numbers in the past to participate. I look at 1951. The Liberals only had seven seats, would not have been a recognized party, but were clearly part of the balloting and private members' business during that period of time.

**Mr Sibenik:** I'm not sure that the wording of this particular standing order is the same as it was in 1951. I think this standing order came into being at approximately the same time that certain provisions in the Legislative Assembly Act were altered, some time in the course of the 1970s, when there was this expression "members of recognized parties." After 1970 and in successive editions of the standing orders, the use of the word "party" became much more prevalent when changes were drafted to the standing orders.

So this is not really a long-standing provision, 96(d), in the standing orders. That's why I think there's some difficulty on the part of the table. Back then, many years ago, I think it would be fair to say there was no reference to the fact that a member had to be a member of a party, let alone a recognized party, in order to participate in the ballot or any other part of the procedures of the House.

**Mrs Sullivan:** I don't believe we are here to propose specific amendments to the standing orders. We're here to make recommendations to the Speaker that will then proceed to the bodies which do make the recommendations for changes to the standing orders of the House.

**Mr Sterling:** I agree with Mrs Sullivan. Basically, the process will be that recommendations we put forward will be considered by the House leaders, I presume, and there's going to be negotiation that takes place. Then the Clerk is usually called in and the Clerk is asked, along with legislative counsel—they would engage them to draft some standing orders. Then the House leaders will have a look at the draft standing orders and that's when this problem will either be addressed or not addressed. I'm sure the Clerk, in the interest of clarity, will raise this



issue at that time and then the House leaders will negotiate how in fact this is going to take place. Further talk about particularity I think is going to be fruitless for us, and therefore I think we should pass the recommendation as is and move on to the next.

**The Chair:** Is everybody in agreement? Okay. On number 4 now, "Speaking opportunities in the House and its committees."

**Mrs Sullivan:** I think this recommendation is a fair summary of the consensus we were approaching last week and I'm quite prepared to support this recommendation.

**Mr Wessinger:** I think this was one that did create some discussion last week by some of the members of our committee who are not here today, I suppose the concern that we have time allocation situations and how that's going to create a difficulty with the Speaker recognizing an independent member in those circumstances, if it's a time allocation motion or division of time equally among the parties.

**Mr Sterling:** Specifically, what do 24(a), 25 and 78 include, which are part of recommendation 4?

**Mr Sibenik:** Standing order 24(a) deals with the proceedings in the House.

**Mr Sterling:** Dealing with all kinds of business?

**Mr Sibenik:** Those particular provisions deal with the time limits, but they may be a little confusing. Actually, I wanted to refer to a particular standing order that referred to the proceedings before the House, proceedings before the committee of the House and proceedings before standing and select committees. Those were the only ones that came close to referring to those.

What perhaps might be more precise would be to say, "For the purposes of proceedings in the House, committee of the whole House and standing and select committees," instead of referring to these particular standing orders. That might be a bit more accurate, because we are not referring to the speaking limits that are contained in standing order 24(a) and standing order 25.

**Mr Sterling:** I think there are some specific exclusions that should be there. I guess I would trust that the discretion of the Speaker wouldn't allow an independent member, for instance, to speak on a non-confidence motion which is brought forward by a particular political party, an opposition party, and therefore—I guess it's hard to argue that an individual member shouldn't be involved in that. I'm not sure.

1600

**Mr Sutherland:** If they have the right to vote on something, they should have the right to speak to it at some point, within the discretionary judgement.

**The Chair:** Dennis Drainville, taking him as an example of an independent member speaking on a particular bill that the government wants to put in, would need that opportunity.

**Mr Sterling:** I'm just trying to think of examples where I would find it strange that they would be involved.

**Mr Sibenik:** If it will help the committee, I have a

list of things for its consideration. I'll just list the kinds of things that, according to my review of the standing orders, independent members can do.

First of all, they can engage in debate on second and third reading of a government bill; the address and reply to the speech from the throne; the budget motion; the motion for interim supply; a motion for want of confidence in the government; routine motions moved by the government House leader during routine proceedings; time allocation motions and other substantive motions affecting the business or proceedings of the House; motions for returns or addresses; consideration of or motions for the adoption of a committee report; an order of the day for the discussion of a sessional paper; and, finally, a motion to recommit a bill.

In summary, there are a fair number of things that independent members can engage in debate on. That was a list of 11 items.

**Mr Sterling:** Are there any more that a private member can speak to than that? I'm almost going full circle here in saying that I just think it should be a generic statement. Never mind standing order 84 or 34 or 24 or whatever; it should be general. "For the purpose of the standing orders and the proceedings of a standing or select committee, the presiding officer" etc etc. I don't know, by selecting the particular standing orders, what that does. All I know is that it could cause problems somewhere down the line that we're not foreseeing. Again, we're not dealing with the specifics here; we're dealing with general recommendations and we're not talking about drafting the orders right here.

**Mrs Sullivan:** I think it is more appropriate to make the recommendation more generic. I think we could say, "During proceedings in the House, the whole House, in a standing or select committee, the presiding officer" etc. I think the same wording can continue. I think Mr Sterling's right.

In terms of the time allocation, I think while the independent member is allowed to speak to the time allocation motion under this recommendation, the order of the House with respect to the time allocation itself would determine whether the independent member could participate, so that is covered in 4(b).

**Clerk of the Committee:** Can I just clarify one thing, Mrs Sullivan? The only thing that would appear to be missing in the generic statement you said is the right for a late show. That's actually not a proceeding of the House; the House is adjourned, but you want it to be generic enough to cover that. It's not a proceeding of the House, the committee of the whole or a committee.

**Mrs Sullivan:** Sure.

**Mr Sterling:** You can only have a late show if you have a question, and presumably in question period, if the question is controlled, then the late show is controlled. It's a five-minute inconvenience, if you want to put it that way.

**Mrs Sullivan:** Once again, we are looking to the discretion and judgement of the Speaker or the committee Chair to ensure that members of the committee who belong to political parties and who have official critic



functions or other roles in the assembly have the opportunity to participate without limitation on their participation, but to ensure that the independent member also has an opportunity to bring from time to time, at the discretion of the Speaker, the points of view and argumentation that are coming from the representation of that person's riding.

Basically, what we are saying is that in all processes from time to time there should be a Speaker's discretion with respect to the participation of the independent member, and that discretion shall include the opportunities that representatives of political parties have for maximum participation in the debates.

**The Chair:** Any more comments or discussion?

**Mr Sterling:** Does everybody accept 4 with a generic statement, rather than referring to the specific standing orders.

**Mr Wessenger:** I think it's better.

**The Chair:** We'll omit that first sentence. Do you want just read it back?

**Mr Sibenik:** In my view, I think it would suffice if everything up to the word "committee" in the third line were deleted and just have the rest of it, because the rest of the sentence assumes House or committee of the whole House or standing or select committee.

**Mr Wessenger:** I agree with that.

**The Chair:** Then we all agree with 4 as revised.

**Mr Sibenik:** Should "should" be changed to "shall" or "may" in the fourth line?

**Mr Wessenger:** "May" from time to time rather than "should."

**The Chair:** We're all in agreement with 4. We'll go on to number 5, committee membership.

**Mr Wessenger:** I think this is a problematic area, and it should really be left up to the House leaders, basically, to accommodate. Now, if we want to make a recommendation of this committee that the House leaders should work in cooperation to accommodate some role in committee for independent members, I can certainly agree with that sort of aspect, but trying to set up a tight procedure here, as we have, about adding one more government member and so forth I think is going to get very problematic. I would either delete it or, if we're going to make any recommendation, just recommend that we ask the House leaders to cooperate in working out a role.

That's the way I think it should be dealt with, a matter of negotiation, an independent member going to the House leaders and try to negotiate with them, because they do have the right to attend committee meetings and the right to speak at committee meeting under our rules in any event.

**The Chair:** At the discretion of the Chairman.

**Mr Wessenger:** Yes, at the discretion of the Chair.

**The Chair:** If they're not one of the recognized parties and the time's divided, the Chair can ignore.

**Mr Sterling:** I think the Liberals were talking the same as the NDP on this particular motion. I believe

there should be a right to committee membership by an independent member.

**The Chair:** I think that was agreed upon.

**Mr Sterling:** No, it was not agreed upon. Basically, I think it should be negotiated as to what committee, and I think we should wipe out the maximum of 11 rule on a committee and leave entirely in the hands of the House leaders the size and composition of committee. There shouldn't be necessarily a maximum.

**Mr Carman McClelland (Brampton North):** I recall that during the summer recess we had extensive discussions with respect to the issue that Mr Sterling has raised, and it seems to me, if I recall correctly—and I'm not trying to make a judgement call on this one—that all but one person who in fact was subbing at that time were in substantial agreement with that and we actually got hung up with one individual. That's the nature of the business, obviously, and that's fine; everybody's entitled to that. But I think it's fair to say that the overwhelming consensus, save and except one individual, was that we in fact move towards that, to give some latitude.

One of the points I raised at that time was that it seems to me what we do is we naturally gravitate towards that prescribed number, the maximum. It may in fact be appropriate in many instances where the appropriate number of the committee, given the scope in terms of reference of the work at that given point in time, may in fact only be, by way of example, three government members and one or two from each of the opposition parties, whatever the configuration may be.

1610

I think that latitude would allow people with particular regional interests or issues of specific interest to expand, if necessary. But I think that in this day and age equally important perhaps—I don't want to say more important but certainly equally important—would be the opportunity of the House leaders to determine, in their collective wisdom, that the committee wouldn't be well served by having the smaller number of members. So in short, I'm very much in accord with Mr Sterling's suggestion.

**The Chair:** Any other comments?

**Mrs Sullivan:** My personal view is that the Legislative Assembly committee has not yet finished its real work on the role of committees. It seems to me that there are legitimate recommendations that should come forward on the way committees operate, the partisan nature of some committees, the understanding that other committees are not partisan etc.

I think, however, that that is a broader discussion than what we are doing here today, which is attempting to make recommendations to the Speaker about what the role of an independent member is on the committee and how the structure of the committee could or should be changed to accommodate that member.

My view is that the independent member is able to participate in all of the committee business but one, and that is the vote, can be recognized by the Chair, and in fact we have underlined that in the previous section 4 in terms of speaking, debating, participating in questioning of witnesses before the committee, participating in



discussion with respect to the formulation of a report. In fact, isn't it interesting that there are no independent members attending this committee now, when they could have a say as members of the House.

I am not comfortable, this committee not having completed the review of the entire committee structure, in making further recommendations with respect to the place of an independent committee member when we are not yet prepared and have not done the work with respect to restructuring or reshaping or giving a new culture to our committees at Queen's Park.

**The Chair:** Any other comments?

**Mr Sterling:** We've got to decide, are we going to make a recommendation on the committee or not? Where are the government—

**Mr Wessinger:** I'm not prepared to recommend item 5. I think I agree with Ms Sullivan. I'm quite prepared to look at the whole question of committees, how they function, but that's a separate item.

**The Chair:** So committee membership, as I hear it, just leave it the way it is.

**Mr Sterling:** In other words, there's no right of participation on the part of an independent member.

**The Chair:** Oh, okay.

**Mr Sterling:** I want a recorded vote on this.

I move that we make a recommendation that independent members have a right to sit on a committee of the Legislature.

**The Chair:** Okay. Debate on that?

**Mrs MacKinnon:** Question: The way this 5(a) reads, the "independent member seeking appointment to a committee should submit a written request"—are you saying that should be taken out?

**Mr Sterling:** I'm in favour of the recommendation; your party is against it. I am trying to clarify the issue here in saying that I want a recommendation of the right of an independent member to sit on a committee of the Legislature. You'll basically be on record against this. That's what the purpose of my motion is.

**Mrs Irene Mathyssen (Middlesex):** You want voting status for these independent members on committees.

**Mr Sterling:** Yes, I do.

**Mrs MacKinnon:** I'm sorry, I'm not very clear on this at all because the way this recommendation reads—

**Mr Sterling:** I'm not dealing with the recommendation; I'm dealing with my motion. My motion is—

**Mr Wessinger:** The motion's for approval of this recommendation, is that correct?

**Clerk of the Committee:** Can I just clarify what I understand the motion to be on the floor? No one has moved 5 at the moment. We put 5 aside for a second and Mr Sterling has moved a motion that independent members have a right to sit on all committees of the Legislature. That's the only thing that's on the floor at the moment. If that passes, I suppose we could then go on to recommendation 5, which is one mechanism for implementing that, but we're one step back from that; we're just voting on the philosophy. The motion reads, "Inde-

pendent members have a right to sit on all committees of the Legislature."

**Mrs MacKinnon:** Thanks.

**Mr Sterling:** "On a committee."

**Clerk of the Committee:** "On a committee"?

**Mr Sterling:** Yes.

**Clerk of the Committee:** "On a committee." And there's discussion.

**The Chair:** Okay, discussion on the motion.

**Mr Sterling:** I think it's self-evident. All I'm trying to do is get the generic principle. There's no sense in discussing the details of 5 if the generic principle is not agreed upon by the members of the committee.

**The Chair:** Okay. Are we ready for the recorded vote?

**Mr Paul Johnson:** No, I think we need more discussion.

**The Chair:** Okay. I didn't see any more hands go up there, so—

**Mr Paul Johnson:** Well, I was just giving everyone a bit of a chance to get their breath.

The motion is very simple, as I understand it. It's just allowing independent members to sit on committees; is that right?

**Clerk of the Committee:** I have the motion. Mr Sterling moves that independent members have a right to sit on a committee of the Legislature.

**Mr Sterling:** That implies full membership on a committee.

**Mr Paul Johnson:** Yes. I would like to say a few things. I think that it would only be reasonable that any member of the Legislature have an opportunity to sit on any committee. I don't know that it's an absolute that they sit on every committee—

**Mr Sterling:** No, I said "a committee."

**Mr Paul Johnson:** Which one?

**Mr Sterling:** We'll deal with that after. I think we're at a point of principle here as to—

**Mr Paul Johnson:** That's right. I can't imagine anyone would disagree with you, quite frankly.

**Mr Sterling:** Look behind you.

**Mrs Mathyssen:** I have no objections to them participating in discussion because I'm quite sure that from time to time an independent member would have valuable insights to bring to a committee in terms of decision-making. However, I am very concerned about the ability of an independent member to vote on a committee inasmuch as again you get into a situation where the government of the day has an obligation, through the committee, to promote legislation that it has prioritized as important and this independent member could very well skew that inasmuch as committees would require more government members in order to ensure that the work before the committee was done in the way the duly elected government of the day envisioned it be done.

I have some difficulty here. I think committees here are too large. I understand that this is something that's

quite recent, but I see people spread too thinly as is, and if an independent becomes a member of a committee with voting rights, then that makes it even worse.

**The Chair:** Mr Wessenger.

**Mr Sterling:** Could I respond?

**Mr Wessenger:** Okay, if you wish.

**Mr Sterling:** I don't think the control of the majority party is an issue. That is an issue only when you combine it with the fact that you are inflexible with regard to the size of committees. If you are inflexible with regard to the size of committees, then you do have a problem inserting an independent member in a committee. I think that the size of a committee is not nearly as important as the right of an independent member to sit on a committee.

**Mrs Mathysen:** But then does that not come back directly to what Mrs Sullivan said about reviewing the entire committee process in terms of being able to make good recommendations and decisions about this?

**Mr Sterling:** Not really, because all we're talking about are numbers basically and perhaps the right of an independent to inject himself in the debate of the committee. But he's going to have that trouble regardless of whether he's a member of the committee or not a member of the committee.

1620

Basically, what you have to do is increase the number on one committee, or whatever number of independents there were on whichever committees—you'd have to increase the number to 12 or 13, so the governing party would have at least a majority in every case. That varies from Parliament to Parliament. It depends on the balance that exists in that particular Parliament.

How the balance is normally arrived at is based on the smallest party. The smallest party usually wants to have two members on every committee just because of the nature that one member may not be there, as Mr Villeneuve today is. I don't know whether he's in the Chair in the House, but he's otherwise occupied. In the smaller party you need a little bit more flexibility because you just don't have the number of bodies to be there.

Generally, the negotiation which takes place as to the number on the committee takes place after an election and the House leaders get together and say, "How is the split going to come down?" The majority party must have a majority on the committee. Everybody understands that. The smallest party usually wants two members. So then the second party, being the official opposition in our structure, wants to have something greater and somewhat in proportion to what the others are. That's how it's arrived at.

The 11, which is included in our standing orders as a maximum, is an arbitrary figure that somebody came up with. Quite frankly, I find arguments about the number of politicians on council or the number of politicians involved in a particular committee rather specious and really not of much substance.

I don't think it matters whether you have a committee of 25 or you have a committee of five. If you can do it with five and get away, I think it's better, but if you have

to go to 25 to have equity reached in terms of what's happening and include everybody, then I say you have to go to 25.

**Mr Wessenger:** Putting it as, do we believe in principle that independent members ought to have an opportunity to participate in a committee, I think we can all agree yes. I would assume that all of us here agree with the principle. I think the difficulty is that some of us don't want to, at this stage, come up with a specific proposal dealing with only the question of how you can accommodate an independent member on a committee.

I think Ms Sullivan has put it very well. We should look at the whole committee structure. I'd be quite prepared to pass a motion that we include in our looking at the committee structure how to accommodate the independent member in that committee structure as one of the items of consideration. I'd be quite prepared to support that.

I just want to make it clear that I don't think our concern here is with the principle; it's with the question of how we approach this problem, and I don't think the specific proposal is particularly workable when it's there. We need to, as I said, look at the whole question of the committee structure and how we deal with legislation. Of course, my interest is in looking at the whole question of parliamentary reform, which I think could be much more interesting to look at and deal with.

I don't see the particular problem right now under the rules with respect to an independent member. I think independent members would be able to negotiate with the House leaders to get on some committee if they wish to, and I don't think it would be an insurmountable challenge to find a role on a committee for an independent member. I would assume the House leaders would be reasonable in trying to negotiate that. I would have confidence in that, because otherwise I think the independent member would have a political issue to raise.

**Mrs Sullivan:** I still am confirmed in my view that the committee process has not been examined yet appropriately. However, I do think we might be able to come to a compromise here with an amendment to Mr Sterling's motion that would refer to the House leaders. Mr Sterling's motion says an independent member should be able to seek appointment to a standing or select committee, and a process to that end should be included as part of the negotiations by the House leaders with respect to changes in the standing orders of the House.

That doesn't preclude any other recommendations this committee may formulate with respect to committee operations also going to the House leaders. Let's make no mistake about it: It's the House leaders, through negotiation, who determine where and how standing orders will change, and the government has more clout. The government, as you know, has imposed its will on more than one occasion with respect to the standing orders, and many members feel distinctly chagrined about the nature of changes that are made without consensus.

The one difficulty about the independent member not having full status as a committee member is that if a committee is travelling, the independent member only sees what's happening around Queen's Park and is not a



participant in the deliberations of the committee when it's on the road in other areas. In my view, you cannot be a good member unless you understand something beyond downtown Toronto.

I think the way to go is to give a signal to the Speaker that this committee is interested in further reviewing the role of the independent member; that we feel the House leaders should be looking at this situation. We can also signal to the House leaders that we are prepared and interested in looking at other changes to the committee functions here.

**Mr Sutherland:** I want to call the question on Mr Sterling's motions.

**Mr Wessenger:** As amended?

**Mr Sutherland:** No.

**Mr Sterling:** It depends on what the amendment is. I don't think you can call a question once it's been amended. I think you have to call the amendment first.

**Mr Sutherland:** Yes, I understand that.

**Mr Sterling:** Can you read the amendment?

**Clerk of the Committee:** I'll read both. We have Mr Sterling's motion that says "independent members have the right to sit on a committee of the Legislature," and Mrs Sullivan has amended that by adding, "and that a process to that end should be included as part of the negotiations by the House leaders with respect to changes of the standing orders of the House."

**Mr Sterling:** The Speaker can't change the standing orders anyway. It's got to be a vote of the House, and therefore the government party is going to control this in the end, but after negotiation.

**Mr Paul Johnson:** Who makes the decision which committee the independent member sits on?

**Mr Sterling:** Basically, you get into recommendation 5 when you start talking about that. My thoughts were that an independent member would have to go to the three House leaders and say, "I want to sit on a committee."

**Mr Paul Johnson:** To affirm the right of an elected representative of this Legislature to sit on a committee, as your motion suggests, again I say I can't understand why anyone wouldn't support that. That's a very simple premise that we're going to have to follow up with a lot of debate among all the parties and the House leaders to come to some consensus on how we deal with it, is that not right?

1630

**Mr Sterling:** There are only one or two questions as to how you have to deal with it, and that's why I can't understand why the committee can't get their hands around this. I don't understand the complexity of it.

The one issue we've got to deal with is the maximum of 11 members on a committee. My view is that you do away with that rule and you allow the House leaders to figure out how many members they're going to have on a committee. They may decide, in their wisdom—in this Parliament it's 11; in some cases 12 or 13 to accommodate an independent member. In the next Parliament it may be six.

**Mr Paul Johnson:** If I may, your motion simply affirms that we agree that independent members of the Legislature have a right to sit on committees. That's all your motion does. Beyond that, there are other issues.

**The Chair:** Then we go on to the amendment.

**Mr Sutherland:** Mr Chair, I'm trying to bring this issue to a vote. Mr Sterling's motion is very straightforward, very clear. It says that independent members will sit on the committee. It has nothing to do with how that process will be done. What's been stated is that how that process is done would have to be negotiated by the House leaders at some point anyway. We all believe something should be worked out. I know the intent of Ms Sullivan's amendment, but my intent would be to just defeat Ms Sullivan's amendment and vote on Mr Sterling's motion.

**Mrs Sullivan:** I want my amendment passed because I want a signal to the Speaker that it is not the Speaker who will initiate changes; it will be the House leaders, who are representatives of the political parties, and not the Speaker who initiates those changes. That is an important signal to come from this committee.

**Mr Paul Johnson:** Cannot that signal be arranged through another motion rather than—

**Mrs Sullivan:** Well, we could also whisper in his ear. I think it will be quite clear with that amendment.

**Mr Sterling:** Why don't you call the amendment, Mr Chair.

**The Chair:** All those in favour of Ms Sullivan's amendment? Passed.

All those in favour of Mr Sterling's motion, as amended? Carried.

**The Chair:** Recommendation 5. Do we drop 5?

**Mr Wessenger:** Yes.

**Mr Sutherland:** This replaces 5.

**The Chair:** Fine; we go to 6. Do you want to read the relevant standing orders?

**Mr Sibenik:** Standing order 38(c) reads as follows: "On the introduction of a government bill, a compendium of background information shall be delivered to the opposition critics. If it is an amending bill, an up-to-date consolidation of the act or acts to be amended shall be delivered to the opposition critics unless the bill amends an act amended previously in the session."

Standing order 39(d) reads as follows: "The minister concerned shall distribute copies of all reports to all members of the House and copies of any background material to the opposition critics."

Basically, those two standing orders entitle opposition critics to certain information, and the issue is whether the committee wants to extend the access to information to independent members.

**Mr Paul Johnson:** Maybe it should be "made available upon request."

**Mr Wessenger:** That's what it says.

**Mr Paul Johnson:** I see. It's not just automatic.

**Mr Sterling:** There was some concern by some members, particularly my colleague Mr Villeneuve, that

an independent member not be given special rights that other members don't have. Therefore, I would change the wording of this and say, "Any member of the Legislature should, upon request, be provided with information specified."

**Mrs Sullivan:** I agree with that.

**Mr Paul Johnson:** Straightforward.

**The Chair:** Everybody in favour of that change? Yes. Any other discussion on 6?

**Mr Sterling:** I just want to bring to the attention of the committee an incident which took place yesterday in the Legislature. As many of you know, we had first, second and third reading and royal assent of a piece of legislation dealing with the Lambton school strike. During that particular process, an independent member was quite aware of his ability to stop that from occurring. It required unanimous consent for us to deal with all of those three stages in one day; according to standing orders, I don't think a government has the right to have first and second reading, nor second and third reading, in the same day.

I hearken back to some of the discussion we had in September vis-à-vis unanimous consent. I only want you to know that one of the independent members in our Legislature was quite aware of his power during that time.

I had suggested at one point in time that we make it two, rather than one, to object to unanimous consent. We went away from that and got involved in a long debate as to how it's done at the House of Commons. The decision was that it's not a big enough problem and therefore we should forget about dealing with that issue and wait for something to happen. I'm glad something didn't happen yesterday, because I think that would have been very detrimental to the settlement of the Lambton school strike. I don't know whether members of the committee want to revisit that issue or whether they would just leave it as we have.

**Mr Wessenger:** I'd just like to get some clarification. I understand there's something in the federal rules that would allow a motion of the House to override a situation such as that. Perhaps we should ask for a report from a researcher with respect to what they do in the federal aspect, and we could look at that with respect to a possible recommendation.

**Mr Sterling:** I think we have had a report already on that, presented in September.

**Mr Sibenik:** I did indicate to the committee in September the provisions in standing order 56.1 in the Ottawa standing orders. That is a provision that deals with a situation where unanimous consent has been denied. What happens after that is that the government House leader can request that the Speaker put the question on the motion. If 25 or more members rise in their places, then the motion is deemed to have been withdrawn, so the situation is that 25 members are required in that particular situation. In fact, I have the provision right before me, and it reads as follows:

"In relation to any routine motion for the presentation of which unanimous consent is required and has been

denied, a minister of the crown may request during routine proceedings that the Speaker propose the said question to the House....

"The question on any such motion shall be put forthwith, without debate or amendment."

Then the key provision is as follows,

"When the Speaker puts the question on such a motion, he or she shall ask those who object to rise in their places. If twenty-five or more members then rise, the motion shall be deemed to have been withdrawn; otherwise, the motion shall have been adopted."

So there is a deeming provision, in a sense, with respect to overriding the absence of unanimous consent.

**Mr Sterling:** So the individual member can stop it for a day, because they've got to go to the routine proceedings of the next day before there's a call.

**Mr Sibenik:** That's right.

**Mr Sterling:** I don't know. I'm just happy that saner heads prevailed yesterday in terms of what went on, but it frightened me a little in terms of—

**Mr Paul Johnson:** Well, we all have that power. It's not just the independents, of course. Any disgruntled labour person could have jumped up there and said no.

**Mr Sterling:** But when you're under the party structure, you have to answer to—

**Mr Paul Johnson:** You have to suffer the wrath of your colleagues.

**Mr Wessenger:** I'd certainly be willing to consider looking at it. I think 25 is a pretty high standard.

**The Chair:** No, you'd have 12.

**Mr Wessenger:** Even 12 might be too high for our circumstances; maybe five would be more appropriate for our circumstances.

**Mrs Sullivan:** You'd need 12 to block a vote?

**Mr Wessenger:** Yes, 12 to block a vote. If you want to bring a recommendation, I'd be prepared to ask the researcher to prepare for us a suggested rule change, if that's what you're suggesting.

**Mr Sterling:** Either that or we try to deal with it in a generic way: We say in the report that we recognize there's a problem with unanimous consents and dealing with independents, and then we draw perhaps the example of what the House of Commons does in order to meet that problem, and just leave it at that. Rather than us trying to hash out what is a reasonable kind of thing, I think the recognition of the problem is important.

**Mr Wessenger:** Yes, I would agree.

**Mr Sterling:** If everybody agrees, why don't we just say that we recognize there's a problem in terms of party discipline with an independent being able to utilize his voice of dissent when unanimous consent is called and that we recommend to the House leaders that they look at the standing orders of the House of Commons dealing with this matter.

**Mr Wessenger:** I'd support that.

**The Chair:** Everybody in agreement with the suggestion by Mr Sterling? Okay, that's number 7. Any other business of the committee?



**Mr Paul Johnson:** I'd just like to bring to the attention of all the committee members and legislative counsel the "Composition of the Legislature following Ontario General Elections" sheet that was given to all of us. I think it has an inaccuracy in it.

**Mr Sterling:** It sure does.

**Mr Paul Johnson:** I'm sure I'm not the only one who noticed it. When you go to the 1990 numbers, those aren't the numbers I remember from the 1990 election. Correct me if I'm wrong, but I think it was 74 for the New Democrats, 36 for the Liberals and 20 for the

Progressive Conservatives. I know that's not your mistake.

**Mr Sibenik:** Maybe I should pass that on to the appropriate authority.

**Mrs MacKinnon:** I think you should.

**The Chair:** How many copies of this have you had out already?

Any other business of the committee? We're adjourned.

The committee adjourned at 1643.

## CONTENTS

Wednesday 27 October 1993

<b>Role of the independent member</b> .....	M-111
Peter Sibenik, procedural research clerk, committees branch, Office of the Assembly	

### STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

- \***Chair / Président:** Hansen, Ron (Lincoln ND)
- \***Vice-Chair / Vice-Président:** Wessenger, Paul (Simcoe Centre ND)  
Dadamo, George (Windsor-Sandwich ND)
- \*Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)
- \*MacKinnon, Ellen (Lambton ND)
- \*Mathyssen, Irene (Middlesex ND)
- \*McClelland, Carman (Brampton North/-Nord L)  
Morin, Gilles E. (Carleton East/-Est L)
- \*Sterling, Norman W. (Carleton PC)
- \*Sullivan, Barbara (Halton Centre L)
- \*Sutherland, Kimble (Oxford ND)  
Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)

*\*In attendance / présents*

**Clerk / Greffière:** Freedman, Lisa



CA2011  
Xc20  
-L20



M-11

M-11

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 3 November 1993

# Journal des débats (Hansard)

Mercredi 3 novembre 1993

## Standing committee on the Legislative Assembly

Role of the independent member

## Comité permanent de l'Assemblée législative

Le rôle du député indépendant



Chair: Ron Hansen  
Clerk: Lisa Freedman

Président : Ron Hansen  
Greffière : Lisa Freedman



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 3 November 1993

The committee met at 1537 in committee room 1.

## ROLE OF THE INDEPENDENT MEMBER

**The Chair (Mr Ron Hansen):** We'll bring this standing committee on the Legislative Assembly together. I have here in my hand a sub slip given to me for Peter North to be substituted for Noble Villeneuve. I will rule that—

**Mr Norman W. Sterling (Carleton):** Just a minute, Mr Chair. Before you rule, I think it's only fair to undertake argument vis-à-vis whether this is in order or it's not in order.

**The Chair:** Go ahead.

**Mr Sterling:** Perhaps if the clerk can provide me with section 110(b) of the standing orders, I'd like to read it as to who can or cannot be substituted into a committee.

**Clerk of the Committee (Ms Lisa Freedman):** It's (c).

**Mr Sterling:** It's clause 110(c), I guess.

"A temporary substitution in the membership of a standing or select committee may be made provided a notification thereof, signed by the member acting as the whip of a recognized party,"—I believe that is signed by Bob Runciman, the whip of our Progressive Conservative Party—"is filed with the clerk of the committee either before or within 30 minutes of a committee meeting being called to order."

There's nothing in the standing order saying that it must be a member of our party. Mr North is not presently a member of the Progressive Conservative caucus. He is an independent member. I thought it most appropriate that Mr North, being an independent member, have the right to participate in discussions and vote on this particular matter dealing with an independent member.

Who has a greater interest than the independent members as to whether or not they should or should not have rights or privileges vis-à-vis the goings-on in the Legislature of our province? Also, by being substituted as a member of one of the opposition parties, this in no way affects, of course, the majority of the governing party, if that is a concern, and therefore I would argue very strenuously that there's nothing in the standing orders which goes against the allowance of this substitute at this time.

**The Chair:** Any other comments?

**Mr Paul Wessinger (Simcoe Centre):** The question is, is it in order or not?

**Mr Gilles E. Morin (Carleton East):** The question I'd like to ask is, can he do that for any party, or is it only for the Conservative Party?

**Mr Sterling:** My argument is that the standing order allows the whip of any party to allow a substitution of one member for another member.

We've heard a lot, most recently in our federal election, about our parliamentary structures changing, the idea

that participation in those structures be done on a free basis, that members have more of a role and less along a party line. Therefore, my party feels on this particular matter that these deliberations, dealing with the independent matter, should have an independent member sitting on this committee to deal with those matters. Now, whether or not a party would feel, on another subject matter, that this was appropriate, it would be up to that political party to make that decision.

**The Chair:** Any other comments?

**Mr Sterling:** I want to add, Mr Chairman, that I did give the clerk notice that I was going to raise this this afternoon in the House. I notified the clerk ahead of time so that people would not be taken unaware that I was going to attempt to substitute Mr North in this afternoon.

**Mr David Winninger (London South):** Mr Chair, could we hear from the clerk perhaps on this matter of the rules and what they provide?

**The Chair:** Okay.

**Clerk of the Committee:** I could read the rules for you. In terms of interpretation or ruling on the rules, that would be the Chair's role.

**The Chair:** Being Chair of other committees, I would have to rule that since he's not a member of one of the three parties, as it is, it says here in 110—I know we're pulling apart little technical things here. I feel we've got a report here and the report was to go to the Speaker to rule on this. This is why I feel, with the last day, just to approve a report—I read in here, it says "representation of the recognized parties in the House." Now, there could be four parties, but the recognized parties that we have presently are the Tories, the Liberals and the NDP. So looking at the standing orders, I would have to rule that he is not to be substituted in.

**Mr Sterling:** Just before you go to that, Mr Chairman, because what you do by—

**The Chair:** I want to get the point that you're challenging the Chair. This is just information you're giving to me?

**Mr Sterling:** No. Basically I'd like to know what the history is with regard to this matter, whether or not there has been a precedent in terms of dealing with this and whether or not you, Mr Chairman, or we, should change precedent and why we should or should not change precedent.

I believe that section 110 of the standing orders was written to protect parties, to protect proportions in committee so that the proportions in the committee would be as they were in the House. So if I am the governing party and I'm in a majority government, I want to be very concerned that I always have the majority in a committee, and I understand that. If each of the parties wants equal representation in the committee vis-à-vis what they have in the House, I understand that as well.

But if one of the parties, our party in this case, decides that we don't need our fair proportion as determined by the House leaders in a generic form at this time, because of the issue that we're dealing with, why shouldn't my party have the right to make a decision to put an independent into this committee in order to allow him to debate on a subject which is as relevant to him or more relevant to him than it is to each of us who are members of parties?

I'm making the arguments behind the logic in terms of ruling in favour of allowing Mr North's substitution. What I would like to know is, is there precedent where some party has attempted to substitute before, and if it was rejected, I'd like to know the reasoning behind that. Am I missing something?

**Clerk of the Committee:** There are, to the best of my knowledge, two recent precedents on this section and I anticipate that you may wish to distinguish them from the current situation. The only rulings there have been on this section were on an attempt to substitute somebody for Mr Kormos while Mr Kormos was in committee, and there was an attempt to substitute an NDP member for Mr North when Mr North was no longer a member of the NDP and that substitution slip was rejected.

**The Chair:** It's been the practice—

**Mr Sterling:** I don't think that those are—

*Interjection.*

**Clerk of the Committee:** In the precedent that I've stated?

**Mrs Irene Mathyssen (Middlesex):** Yes.

**Clerk of the Committee:** The substitution slip was not allowed.

**Mrs Mathyssen:** It wasn't challenged; it was simply not allowed.

**Clerk of the Committee:** It was not allowed and it was not pursued in committee. It was not allowed.

**Mr Paul R. Johnson (Prince Edward-Lennox-South Hastings):** Notwithstanding Mr Sterling's munificence, if—

**Mr Sterling:** His what?

**Mr Paul Johnson:** Munificence.

**Mr Sterling:** Oh.

**Mr Winninger:** Not to be confused with magnificence.

**Mr Sterling:** I thought it was magnificence.

**Mr Paul Johnson:** Notwithstanding Mr Sterling's munificence, either this is in order or it's not, and if it's not, then I suspect the Chair could ask for unanimous consent as to whether it was allowed or not, and the prerogative is certainly up to you, Mr Chair.

**Ms Dianne Poole (Eglinton):** I'm not a regular member of this committee, but just to try to be helpful in solving this dilemma, since we don't appear to have a previous precedent that exactly fits this case, might I suggest that Mr North would have a right to come and participate in the debate just as any member of the House does.

It is my understanding from talking to colleagues in

my party that that is not going to be a contentious vote, although that's subject to change at any given moment and any given whim in this particular place. Could Mr North not just participate as a member and give us his contributions and then you could reserve judgement on this while you consult perhaps with the Speaker and with other parliamentarians? It's just a suggestion.

**The Chair:** The thing is that any elected member of the Legislature can participate, but not as a voting member on the committee unless substituted by a party. If it's a Conservative, a Conservative member would be subbed in, or if it was a Liberal, it would be a Liberal or a government member. So I rule that there's no problem with Mr North sitting here as an elected member to participate, but not as a voting member on the committee.

**Mr Paul Johnson:** Good ruling, Mr Chair.

**The Chair:** So I don't find the substitution slip here valid because it's not the same party.

**Mr Sterling:** I think then we should adjourn, Mr Chair, so that I can appeal this to the Speaker.

**The Chair:** You're appealing my ruling to the Speaker then?

**Mr Sterling:** Yes, I am.

**The Chair:** Shall my ruling be appealed to the Speaker? All those in favour?

**Mrs Ellen MacKinnon (Lambton):** I don't understand.

**Clerk of the Committee:** Do you want me to explain it?

**The Chair:** Yes, explain it. Okay.

**Clerk of the Committee:** If there's an appeal of a Chair's ruling, the Chair has to put the question, "Shall my ruling be appealed to Speaker?" If a majority of the committee decides that the ruling shall be appealed, then the ruling shall be appealed to the Speaker. If a majority doesn't decide that it shall be appealed, then it's not appealed. The Chair will have to put the question, "Shall my ruling be appealed to the Speaker?"

**Mrs MacKinnon:** I have a question. Can I put it just now or am I in the wrong place?

**The Chair:** Okay. There's a motion already.

**Mrs MacKinnon:** I know, but—

**Mr Sterling:** I can still appeal it, regardless?

**The Chair:** Yes.

**Mrs MacKinnon:** I should have got my question in before.

**Mr Sterling:** But you mean I can't raise that in the Legislature?

**The Chair:** If we wind up at this point, if I'm defeated as the Chair, then we will dismiss for the day; we won't carry on with any more business, correct.

**Ms Poole:** Might I ask a point of clarification?

**The Chair:** Yes.

**Ms Poole:** Is the phrase, "Shall the committee uphold the challenge to the Speaker?" or, "Shall the committee allow the challenge?"

**Clerk of the Committee:** The actual question is,



"Shall my ruling be appealed to the Speaker?" He's ruled that the substitution slip is not valid and the question that is to be put is, "Shall my ruling be appealed to the Speaker?"

**Mr Sterling:** What standing order is this?

*Interjection.*

**Mr Sterling:** Okay; I'm sorry I asked.

**Mr Morin:** Does this have to be done in committee?

**Clerk of the Committee:** Yes.

**Mr Paul Johnson:** This is a valuable learning experience for me today.

**Ms Poole:** This happens every time they tell me the committee meeting is going to be short.

**Mrs MacKinnon:** Mr Chair, aren't we jumping the gun? Nobody ever wants to let me talk anyway.

**Mr Wessinger:** Can we recess?

**The Chair:** Okay, we'll recess for five minutes.

*The committee recessed from 1552 to 1554.*

**The Chair:** Shall my ruling be appealed to the Speaker?

**Mr Sterling:** I'd like to speak on that.

**The Chair:** Yes, Mr Sterling. Wait a minute. There's no discussion now.

**Mr Sterling:** Why not? This is a question you're putting. Why can't we have discussion?

**The Chair:** There's no debate on a decision made by the Chair. So I'm saying, shall my ruling be appealed to the Speaker?

**Mr Sterling:** But this is a different issue.

**The Chair:** Do I have to have a show of hands on this?

**Mr Sterling:** I'd like a recorded vote.

**The Chair:** Okay. All those in favour?

**Clerk of the Committee:** Of it being appealed to the Speaker.

**Ms Poole:** Those in favour of an appeal to the Speaker, is that what we're voting on?

**The Chair:** Yes. All those in favour?

**Ayes**

Sterling.

**The Chair:** Mr Sterling only. All opposed?

**Nays**

Johnson (Prince Edward-Lennox-South Hastings), MacKinnon, Mathysen, Morin, Poole, Wessinger, Winninger.

**The Chair:** Defeated. Now we just carry on. Mr North, you're welcome to sit but not as a voting member.

**Mr Peter Sibenik:** I hope that all members have a copy of the revised draft report in front of them. I will just briefly review what changes occurred in these. I would say that the essential changes were to recommendations 5, 6, and a new number 7.

Number 5 is almost word for word a motion that was put the last day, as well as an amendment to that motion. It deals with membership on standing and select committees.

The sixth recommendation, dealing with access to certain information, was recast so that any member has an opportunity to request access to that particular information.

The seventh recommendation is a new recommendation dealing with the unanimous consent provisions in the standing orders of the House of Commons of Canada. There was some consensus the last day that perhaps the House leaders should look at this particular issue in light of the fact that there are a number of independent members who are not subject to party discipline.

Those are the three recommendations in which there were substantive changes.

**The Chair:** Any discussion?

**Ms Poole:** As a non-regular member of this committee and a substitute today, I was hesitant to speak, but I just want to commend the committee on the excellence of the report and for giving independent members an opportunity to participate.

I only have one minor suggestion, if it meets with the approval of the committee. On page 1, entitled "Introduction," the second bullet point says, "The standing orders provide independent members with many opportunities to participate in the proceedings of the House and its committees." I would submit that "many opportunities" might be a little excessive, because I think probably the majority of members in the House do not have many opportunities to speak.

Certainly, if you talk to the members of the government opposite, I think they do have opportunities from time to time, but very few of us have many opportunities. I think what you want for independent members is to ensure that they have similar opportunities as every other member. I would just ask if members would consider having that bullet point say, "The standing orders provide independent members with opportunities to participate in the proceedings of the House and its committees."

**The Chair:** Any discussion on the suggestion for leaving the word "many" out?

**Mr Paul Johnson:** If I may, that's a good point. "Many" is not well defined, and I think just "opportunities" generally is certainly—if you have an opportunity at all, I think that's understood.

**Mr Winninger:** Are we allowed to raise new points now or are we still dealing with the original point?

**The Chair:** This is just Ms Poole's right now; if there's any other discussion on Ms Poole's. I think the committee is in full agreement. Does everybody agree that we leave the word "many" out? Okay. Mr Winninger.

**Mr Winninger:** Number 3, "Private Members' Public Business," 3(a) in particular, the recommendation is that an independent member "avail himself or herself" of standing order 96(c)(i), (iii) and 96(d). Every time I go away from this committee and come back—

**Mr Sterling:** You shouldn't go away.

**Mr Winninger:** I know. I probably shouldn't but we all have competing obligations.

My understanding at the last session of the committee

I attended was that there was considerable concern, at least on the government side, and I think understanding on the opposition side, that the way in which rotations in private members' public business hour operate, government members are at a disadvantage. I don't know if we know more about how those names are picked from one drum or three drums than we did that day, but clearly if you have three drums and you're picking names from each drum in sequence, government members having a larger majority will have fewer opportunities as backbenchers to participate in that morning session. Has that now been clarified?

**The Chair:** Yes, it has.

**Mr Sibenik:** I believe we indicated the last day that there were in fact three boxes and that the names are picked in rotation, beginning with the government side. I believe I raised this particular issue the last day, but there seemed to have been a consensus on the part of the committee last day that we leave this for discussion, perhaps negotiation, among the House leaders. This particular recommendation was left intact from the previous draft report for that reason.

There was a difficulty, as you indicated, and that was raised at the meeting that you were in attendance at.

1600

**Mr Winner:** Perhaps I would ask you, firstly, then to confirm that it's your understanding, given the way in which the draw is made for rotation in private members' hour, that a party with more backbench members would have fewer opportunities for each backbencher to bring a bill forward in a session than would an opposition party having fewer members. Is there any consensus on that?

**Mr Sterling:** That's the way it is now.

**Mr Winner:** That's the way it is now. I guess what I'm concerned about is that in no way does the report or recommendations, as I read them now, flag that as an issue. For the record, I've said before and I say again, I don't see why an independent member should have more opportunities than I do as a government backbencher to present resolutions or private bills during private members' public business.

**Mr Sterling:** He won't.

**Mr Winner:** If he has a fourth drum, as it were—

**Mr Sterling:** No, he won't have a fourth drum. You put all the names in one jar and you start picking.

**Mr Winner:** Right.

**Mr Sterling:** You start numbering them, 1 to 100, if all those people want in the draw. The independent member draws 43, so he is 43rd on the list; end of story. You take the first one. If that happens to be a government member, he's first. If the second happens to be a government member, he doesn't get on till the next week, and you put an opposition member in and you go through your rotation, as they are now. But the independent member will have no more advantage nor less advantage than anyone else. He will be 43rd if he's 43rd, he will be 99th if he's 99th, and he'll be first if he's first.

**Mr Winner:** Well, okay—

**The Chair:** Mr Winner, we had gone through this

last week at the particular meeting and it was agreed upon by the committee that this report, the way it's written now—I think we're rehashing an old issue. You've brought the point forward to the committee again, but I don't think we want to debate that particular part when we have the report written in a final draft. If you had been here last week, you could have put your comments at that particular time. It's unfortunate that you had another commitment at that time.

**Mr Winner:** Then I need clarification, okay? Under the existing concept there are three bins, and names are drawn in rotation.

**Mr Sterling:** Not a bin. Talk about the choices that are there.

**Mr Winner:** You're saying each member will be given a number—

**Mr Sterling:** Yes.

**Mr Winner:** —and in that ideal random draw, any member would have one chance in 110, shall we say, to have his or her number be drawn.

**Mr Sterling:** That's right. But if you're a member of the government, your name may be delayed if in fact you're not in rotation as to what goes around. In other words, if it's government, opposition, third party, then that will be one, two three, one, two, three, and they will take the highest numbers in each of those categories.

**Mr Winner:** Will an independent be treated like an opposition member? Is that what I'm hearing?

**Mr Sterling:** No, he won't.

**Mr Winner:** How will he or she be treated?

**Mr Sterling:** He or she will be treated as to the exact number that he or she gets.

**Mr Morin:** That he's drawn.

**Mr Sterling:** That's right.

**Mr Winner:** So if he gets a 41 number?

**Mr Morin:** He's 41.

**Mr Winner:** And how does he get his number in the first place?

**Mr Sterling:** You put all the numbers in—

**Ms Poole:** I was quite confused, the same as Mr Winner, as to how this was happening, but apparently they only actually end up drawing from one box, even though there started out to be three.

**Mr Sterling:** No. I'm saying they're going to have to change it. They're going to have to have one box.

**Ms Poole:** Okay. Right now they have three, but you're saying they would change it to one box.

**Mr Sterling:** That's right. It's just a little bit of a mechanical change. Now, I will say that an independent member may have a slight advantage over a government member under the system that I'm proposing.

**Mr Winner:** If that's the system, I don't agree to it.

**Mr Sterling:** I'm saying very, very slight.

**The Chair:** The clerks were going to sit down with the House leaders on this particular issue, so that's where we'd resolved it.



**Mr Winninger:** It's an easy thing to just say in this section 3(a) the same sort of thing we say with respect to many other sections, "The Speaker shall have regard to the opportunities that members of the [recognized] parties have to participate in private members' public business," because I can see a case perpetuated, and we have government members who have never had a chance to present any resolutions or private business on Thursday morning, and an independent member could then have an opportunity that a government backbencher has never had. It strikes me as strange that they would have more rights than government backbenchers.

**The Chair:** I think you've got some of it confused here, and I think it may be just a little bit of advantage, as I say, to the independent is what you're saying and Mr Sterling said. But I think the committee had actually resolved the issue of putting it to the Clerk and the House leaders on this particular issue.

**Mr Sterling:** I think the decision that's going to be made is going to be a combination of negotiation and striking the mechanics of how it's done. In other words, the three House leaders are going to have sit there with the Clerk and the Clerk is going to offer opportunities how they're going to have the draw and the House leaders are going to have to say that's fair or that's not fair or whatever. For us to sit around and talk about this thing in the abstract, there's no fruit, and that's what we decided at the last meeting.

**Mr Winninger:** I agree, but the addition of a simple sentence to (a), that it shall be subject to discussion among the House leaders, would give me the comfort level I need to ensure that if I don't have the same rights now that an opposition member has, they won't be diminished under this system where we could have three

new independent members taking up precious little private members' House time.

**Mr Wessenger:** Could I make a suggestion? Maybe to resolve it, I think, for clarification, if we added in the words "avail himself or herself of standing order 96(c)(ii) in accordance with a process agreed to by the House leaders," if we could all agree to that, it would—

**Mr Sterling:** That's fine.

**Mr Winninger:** That's all I needed.

**The Chair:** Agreed? Okay, we'll add that in then. That's what we had as the thought of the committee last week on that particular thing.

Any other comments on the report? Shall the report be adopted? Agreed?

**Mr Wessenger:** As amended.

**The Chair:** As amended.

Shall I report the report to the House? Agreed?

**Mrs MacKinnon:** To the House or to the Speaker?

**The Chair:** To the House. It'll be handed in to the House, which will go to the Speaker.

**Mr Morin:** That's why in committees when we say—

**The Chair:** Reports by committees.

**Ms Poole:** In routine proceedings.

**Mr Morin:** Yes.

**The Chair:** Shall the title of the report be The Role of the Independent Member? Any comments? Okay, everybody's in agreement then.

We'll call a subcommittee meeting immediately on adjournment.

The committee adjourned at 1609.

## CONTENTS

Wednesday 3 November 1993

<b>Role of the independent member</b> .....	M-121
Peter Sibenik, procedural research clerk, committees branch, Office of the Assembly	

### STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

- \***Chair / Président:** Hansen, Ron (Lincoln ND)
- \***Vice-Chair / Vice-Président:** Wessenger, Paul (Simcoe Centre ND)  
Dadamo, George (Windsor-Sandwich ND)
- \*Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)
- \*MacKinnon, Ellen (Lambton ND)
- \*Mathysen, Irene (Middlesex ND)  
McClelland, Carman (Brampton North/-Nord L)
- \*Morin, Gilles E. (Carleton East/-Est L)
- \*Sterling, Norman W. (Carleton PC)  
Sullivan, Barbara (Halton Centre L)  
Sutherland, Kimble (Oxford ND)  
Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)

*\*In attendance / présents*

**Substitutions present/ Membres remplaçants présents:**

Poole, Dianne (Eglinton L) for Mrs Sullivan  
Winninger, David (London South/-Sud ND) for Mr Sutherland

**Clerk / Greffière:** Freedman, Lisa



M-12



M-12

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Monday 17 January 1994

## Journal des débats (Hansard)

Lundi 17 janvier 1994



## Standing committee on the Legislative Assembly

## Comité permanent de l'Assemblée législative

## Municipal Freedom of Information and Protection of Privacy Act

## Loi sur l'accès à l'information municipale et la protection de la vie privée

Chair: Ron Hansen  
Clerk: Lisa Freedman

Président : Ron Hansen  
Greffière : Lisa Freedman



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Monday 17 January 1994

The committee met at 1407 in the Trent Room, Macdonald Block, Toronto.

MUNICIPAL FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY ACT

LOI SUR L'ACCÈS À L'INFORMATION MUNICIPALE  
ET LA PROTECTION DE LA VIE PRIVÉE

**The Chair (Mr Ron Hansen):** I'd like the standing committee on the Legislative Assembly to come to order. Today we're going to be on the hearings on the municipal freedom of information act. Our first presenter will be the Honourable Brian Charlton, from the Management Board of Cabinet. Welcome to the committee.

**Mr Murray J. Elston (Bruce):** He is the Management Board of Cabinet.

**Hon Brian A. Charlton (Chair of the Management Board of Cabinet):** No, just the Chair.

First of all, good afternoon. I'm the minister responsible for the Municipal Freedom of Information and Protection of Privacy Act. Thank you for allowing me a few minutes with the committee. I understand staff of the ministry will be available this afternoon for technical comments on the legislation.

I appreciate very much this opportunity to appear before you this afternoon as you begin your hearings and representations and views about the municipal access and privacy legislation. I would like to compliment the work of the standing committee for its comprehensive three-year review of the provincial Freedom of Information and Protection of Privacy Act in 1991. Many positive recommendations were made, such as expanding coverage of the act to include more government institutions, expanding areas of access to the public and streamlining the procedures in the act.

Because of the government's priorities at the time and this upcoming review of the municipal act, the government decided that once this review is completed it will consider whether or not amendments should be made at the same time to both the provincial and the municipal acts. As it is your committee's role to assess what changes could be made and to recommend amendments to the Legislature, I'll offer some brief comments on how the municipal act is working to date and identify some issues that I hope the committee will address in its recommendations.

As you know, the aim of the act is to provide the public with access to government information while at the same time to protect the personal privacy of individuals. In general, I believe the act is working well.

On the access side, a great deal of local government information which previously may not have been available to the public is now accessible; for example, expense accounts of employees, the dollar amount of many severance agreements of senior government officials, the salary range of all local government employees, and routine health inspection reports such as restaurant

inspections. In many cases, audit reports and various information about properties, including work orders, are all now accessible as well.

The privacy side has also been effective in ensuring that only necessary personal information is collected and then is only disclosed in accordance with the act; namely, with the individual's consent or only to employees within the institution who must see the information to carry out their duties.

In assessing the positive effects of the act, I must compliment the work of the Information and Privacy Commissioner, Tom Wright. His office has effectively streamlined the appeal procedures, resulting in significant reduction in the time required to process appeals for both the provincial and the municipal acts. The municipal freedom of information coordinators must also be recognized for their hard work and commitment to the effective application of this act.

Within my ministry, the work of the freedom of information and privacy branch demonstrates the importance I attach to this legislation. The staff of this branch conducted approximately 50 workshops throughout the province last year. These included teleconferences, in an effort to provide cost-effective training in northern Ontario. The branch also produced a procedure manual for all local government freedom of information and privacy coordinators and a summary of all significant orders of the information and privacy commissioner.

My ministry is committed to providing support that will help institutions respond quickly and consistently to requests. Last year, local government institutions received over 7,000 access requests. This indicates the high level of interest among the public regarding information about their local governments. I'm pleased to report that local governments responded effectively to these requests. Over 90% were responded to within 30 days. All requested information was released in 54% of the cases, with partial access being granted in another 34%. The majority of appeals were resolved to the satisfaction of all parties through mediation.

With respect to personal privacy, the first comprehensive national study in Canada took place last year to find out how Canadians feel about personal privacy. The findings indicate that the vast majority of Canadians place a high value on their privacy. With the advancements in technology, there is a greater concern about privacy issues and Canadians expect government to ensure their privacy is protected, particularly when it is the government collecting their personal information. We are committed to meeting this expectation.

While it is clear that our access and our privacy legislation is working and has made a positive difference for many individuals and groups, I believe we can improve the legislation in a number of areas. As minister responsible for the act, I'm particularly interested in

receiving the committee's view on the following issues:

First, frivolous requests: This is an issue that was looked at by the standing committee when it reviewed the provincial Freedom of Information and Protection of Privacy Act. The concern some institutions raised is that when a local government receives a frivolous request, there is no remedy available. Currently, the local government institution must process it the same as any other request.

Increased workload is another important issue. Local governments would welcome opportunities to streamline the process for responding to access requests. The need for the process to be more cost-effective is of particular interest at this time, when we are all faced with financial and staffing constraints.

There are a number of concerns about fees. The legislation permits certain fees to be charged for requests dealing with information other than personal information. A municipality or a local board can charge for photocopies or for time spent beyond two hours searching for a record. However, the fees do not cover the full cost of complying with requests. For example, in 1992, the total amount of fees collected by all local governments was less than \$42,000. The legislation does not permit fees to be charged to individuals for access to their own personal information. While the legislation's purpose is to provide access to general records, the implementation of this principle should not be unreasonably expensive for the operations of local governments.

Where the act allows for fees to be charged, the government institution has to calculate a detailed fee estimate. The requester can appeal the fee estimate and some institutions are concerned about the level of detail needed to justify fee estimates at the appeal stage. This ties into the previous issue about the amount of time and work involved in responding to requests.

I would be very interested in the committee's views about fees and about fee estimates and about, in general, how we handle this whole issue, which becomes an issue of cost to our local governments and some other local institutions.

Another issue relates to citizens' groups expressing the view that the legislation should be expanded to cover institutions such as hospitals, children's aid societies and universities. The views of the committee on what organizations should be covered by the legislation will also be important both to me and I think to the overall discussion.

Citizens' groups have also expressed concerns about an inability to obtain records generated in closed local council and board meetings. Local governments are allowed to hold closed meetings in various circumstances. The concern is that the exemption which allows local government to withhold records generated at closed meetings is very broad and it may need to be more clearly defined.

The last area relates to the provisions of the act regarding the disclosure of personal information. For example, one issue is whether or not mailing lists should be accessible. Another issue that has been discussed is the

relationship between the privacy protection rules and the personal information that is a matter of public record. Institutions do not have clear guidelines as to when they should make personal information a matter of public record.

As a further example, elected officials such as municipal councillors and school trustees have stated that the rules regarding their access as elected officials to information, particularly personal information, in the files of their institution are vague.

I look forward to your comments and your recommendations about how the act can work better with respect to these concerns and to other issues which undoubtedly will be raised during the course of the hearings. The work of this committee presents an excellent opportunity for cooperation among the three parties, who all, I think, support the principles of the act.

I've written to my cabinet colleagues to let them know about this important review. When the review is completed, I will seek their assistance in determining where improvements can be made to both the provincial and municipal legislation, and your comments as a committee will be important to me in that process.

All governments in Canada are facing the challenge of earning and keeping the trust and the respect of Canadians. Accountability and openness is essential for government integrity. One of the best ways to open up government is to ensure that our freedom and privacy legislation works the way it was intended.

I wish you well in your deliberations and I thank you for the opportunity to be here. I'll be available for a short period to answer any questions you might have as well as staff being here to deal with specific, technical questions.

**The Chair:** Mr Elston, would you like to start off with a question?

**Mr Elston:** It's basically a bit of a run-through of what's happening. I guess it would be interesting for us, if we have to talk about how many fees have been collected, as to how many people have forgone having their requests processed because they found the fees to be too large.

There are other stats that have to be brought forward to us before we can make a decision about whether or not the fee issue is a big one; whether or not it actually pays for the process they have to go through to find information for individuals.

I know you said they only collected \$42,000, but I've had complaints from several people saying, "You've made it impossible for me because the amount of money that was requested of me up front before we started to get our questions answered was too high." It seems to me there has to be, again, a bit of a balance in relation to that as an issue as well.

1420

There are an interesting couple of complications that I'm noting. It used to be, particularly on municipal business, that if a ratepayer went to the local council, you could ask and you would be told right up front what the reeve was paid, what the deputy reeve was paid, what the councillors were paid, what the weed inspector was paid



and the whole works. It seems now that there is a bit of a split in the municipal field as to whether or not that information is and should be available.

My view is that when this was brought forward there wasn't any intention to change the practice of local governments in being accountable to their ratepayer groups. It seems strange that when money or salaries which are to be paid to local representatives, either school trustees or councillors or whatever, have to be made in form of a motion passed in council itself, for some reason we would determine that it was appropriate that those numbers be withheld from the ratepayers when they make the inquiry.

I'm hoping, by way of question or maybe I should ask, if you, as the person responsible for this act, have heard many complaints about that particular sort of problem and what, if anything, should be done. Should we make an amendment? It seems to me that it should be very clear that a ratepayer should figure out what each elected official that they're going to be voting for for each position is going to be paid. It also would seem to me that this would be the case as well for per diems paid for people showing up for special meetings. I wonder if you have a comment on that particular item.

**Hon Mr Charlton:** Let me deal first with the fees one and then come to the council salaries question. The fee: The issue you've raised around fees and whether or not fees become a deterrent to some to even proceed is a good one and it's part of the discussion that we have to have. I don't know if the staff would have all of those statistics available this afternoon or not, but I'm prepared to ensure that the committee gets the opportunity to look at those overall numbers as best as we can provide them.

I don't know the extent to which we have a clear record of applications at the municipal level that are not proceeded with, but to the extent to which we can have a look at that, I'm certainly prepared, because I agree with you that on any issue like fees, it's a balancing act that we have to proceed with here. On the one hand, we can't unduly burden the institutions of this province with costs that are unreasonable. On the other hand, if we were going to try and provide access to the ratepayers of this province to their local institutions, then we've got to find that balance. So I don't disagree in that respect.

I'll have to be frank with you, although again there may have been some complaints that I'm not aware of: I haven't had any complaints about the second issue you've raised, which is the access of ratepayers to actual council salaries. My understanding, in most of the municipalities that I'm familiar with, is that they deal with their salary issues, as you've suggested, at a council meeting, and not at a closed one either. Therefore, the salaries of council and mayors and the elected officials are on the public record. It's the issue of some salaries in the staff of our institutions that I think becomes the issue that has to be pursued.

**Mr Elston:** That raises a secondary question in that regard then. How far do you go once you disclose some salaries for elected officials? Do you disclose the salaries for the clerk administrator or for others? As a ratepayer, if you are to go in and ask about budgetary issues,

constraints, which all of us are living with these days, how do you determine that everybody is participating fully and fairly with each of the others?

I think if there's one problem right now, because of the economic difficulties we're in, there is a fair degree of suspicion out in the hinterlands that some get to participate fully in their restraints and others get to escape, by one means or another, from the impact of it and it has a whole lot to do with the fact that people are prepared to join in the battle but they don't want to see others escaping without joining in the full cause as well.

**Hon Mr Charlton:** Let me respond to that comment in two ways, Murray: one, with specific reference to the review that this committee will be doing. I'm certainly interested in hearing the committee's comments about the publication of salaries of officials in publicly funded institutions. But in addition to that, you'll recall in the fall when the Minister of Finance announced the change in the regulations under the Securities Act in this province and announced that the top five salaries in publicly traded corporations would become public. I was instructed by cabinet—and I think he made comment on this at the press conference after his announcement—to look at both the provincial and the broader public sector institutions in this province and what it is we would have to do to pursue a similar line. So I'm more than happy to hear this committee's comments in that respect, but the issue is being pursued in a parallel track, if you like, as well and my officials will be coming forward to me with some recommendations, hopefully shortly.

**Mr Elston:** Maybe just by way of a couple of final comments more than questions, one dealing with your statement which talked about frivolous requests and how do you deal with them. If I might just make an observation, what is frivolous to me isn't necessarily frivolous to someone else. I would be very, very concerned about trying to put a definition around what would be deemed to be a frivolous request. I know, for instance, that sometimes in public institutions personal disputes come into play when people have a difference of opinion over a particular issue. So to try and lever, sometimes people make a large number of requests and at some point, while they may all be relevant and whatever, some other person or official may very well take it on themselves to say, "This is just trying to get even and it's frivolous as far as I'm concerned."

Those types of battles I think we would have a very difficult time trying to handle by way of an amendment in this act and I would very much have to receive a lot of information to change my mind about having a section that says anybody can resist if they believe a request to be frivolous, because that would mean you'll get all kinds of complaints, I think, to the commissioner and other places and we'll find that the backlog probably shows up someplace else.

**Hon Mr Charlton:** In that respect, I again don't disagree at all. Because it's an issue that's been raised with us fairly frequently by the institutions that are covered currently by the act, I think it's something the committee's going to have to consider. When I say I'm looking forward to hearing your comments on that, I



don't want to prejudge the committee's conclusions, and if those conclusions are that there is no effective way to define frivolous, that's fine. I just wanted to signal that's one of the issues that we've certainly been confronted with by a number of the institutions out there and that most certainly will come before the committee.

**Mr Elston:** It may very well be that one or other of the members here will be able to bring something forward that will convince us as a committee, that would act as a good amendment for frivolous requests, but at this point I think it would be quite difficult.

A couple of other things that I note, one being the request of whether or not this legislation should be extended to hospitals and others. When this bill came in, the hospitals and others were excluded because there was to have been a movement by the Ministry of Health at that point to upgrade its own freedom of information system inside hospitals, as I recall. I think Mr White is here in the audience and I remember we had this debate at that point and I think we at that stage acquiesced to them having a time frame that would allow them to work on their own precise program that would allow access.

From my point of view, if we are to consider whether or not we extend the legislation, it would seem obviously necessary that we have officials from the Ministry of Health or any other ministry that is responsible for—I see the parliamentary assistant from the Ministry of Health is actually here in Vice-Chairman capacity today. But we should have people who are responsible as ministries for those institutions to whom we might consider extending this. I would not at this stage want to do that without having the material from those places.

If in fact we find that there is an unwillingness to move to bring freedom of information to bear in those institutions, then I think we have an initiative to make the report here that says that there is a time limit on them to bring forward their freedom of information or that some other arrangements be made between your Management Board officials and that ministry to make sure that something comes about. So if we are seriously to consider the options of extending, I would ask that we consider also bringing in representatives from those ministries to speak to us and to present us with their observations on this.

1430

The final observation—it's not the only one I'll have, but at this stage I think it's probably the only one that really needs to be made; it's sort of on the top of my head at the moment—is with respect to school boards and access of parents to information about their children, the old issue of whether or not the school can allow a photographer to take a picture of somebody who wins the local events for the school and have them printed in the newspapers.

Somehow or other, as is put in at least one or two of the letters that have come forward and have been previously circulated to us, we've got to have a bit of common sense about this. I still have a concern about how my daughter, who is now more than 16 years of age, is doing at school, and having access to the information without getting sort of her consent. I mean, I don't have to go

around—she shows her report card and the whole works, but there are a number of parents who are shut down from knowing how performance is going for their offspring at schools.

In some ways I have a sense that more walls have been erected since this legislation has come about than we would have hoped. There have been a few stumbling blocks which have been put in the way of a smooth flow of information which previously was made to individuals in the field. I hope during these hearings that we have those incidents highlighted for us to see whether or not there was a mischief being played on the public and its access to information in that sense in the name of protection of privacy.

I told individuals that I was going to be sitting on the committee for the next couple of weeks listening to the hearings on the freedom of information and protection of privacy for municipalities and others, and they said, "Oh, boy," knowing that it probably wasn't going to be the most sensational or otherwise. Yet I find this work to be the very basis of the institutions which we've served for some time now.

Mr Sterling over there actually laid a lot of groundwork, because I found there was a lot of ground to cover when I ultimately came on to the cadaver that he left when he took up opposition politics. But all of us understand the importance of this, and yet it's only when you get in the middle of it by either making an application or trying to make an application for a free flow of information that you understand how basically important this stuff is and how easy it is in some cases to stymie the free flow of information. I'm hoping that we can improve this without unnecessarily complicating the world that we now find ourselves involved in.

I'm looking forward to the hearings as well. There will probably be, at least from the letters, some interesting issues for us to consider. I hope we will be able to get, as much as possible, hard, factual data for us to base some of our opinions on, as opposed to some of the more artistic application of anecdotal information.

**Mr David Tilson (Dufferin-Peel):** I'd like to thank the minister for summarizing some of the issues that have come to his staff's attention that the committee can consider. I guess my immediate observation with this piece of legislation, the municipal legislation or the provincial legislation, is asking the question whether or not we've gone too far. In other words, there's the issue of privacy versus the issue of accountability.

I look at the clippings this morning. On the front page of the Toronto Star there's an article, "'Fat Cat' Toronto Battles Payroll Bulge: Critics Say City Let Bureaucracy Grow Out of Control." One of the difficulties that members of the public have drawn to my attention, whether it be in the provincial field, looking at deputy ministers or assistant deputy ministers or people over \$40,000, whatever the figure was, or people in the municipal field, which was an issue that Mr Elston had touched on, is looking at what their senior people earn. You can't find out. You can find out a range. You don't know, really, anything. You don't know what their perks are. You don't know what their salary is. You—when I



say "you," I mean members of the public—may have some concerns about, I suppose, their job and what sort of work they're doing, but that's all.

In fact, we as politicians don't know. I have absolutely no idea what the civil servants are making. The municipal politicians, unless they're told personally, have absolutely no idea. Okay, ranges. Ranges have come to me as being totally unacceptable. Again, I understand that if I were a senior civil servant and you wanted to know what my salary is, it's none of your business. But, on the other hand, you have to look at the issue of accountability.

I think there was general acceptance of this legislation by all three parties. I'm not too sure what it was—I wasn't around then—but I gather there was general acceptance of the philosophy of the legislation. But have we gone too far? It's the headline, the fact the city of Toronto has gone out of control, or the problems that this government has had with the social contract legislation where people are losing their jobs. And there are people losing their jobs, particularly at the contract level.

**Mr Pat Hayes (Essex-Kent):** A lot of jobs saved, though.

**Mr Tilson:** That's fine for you to say, but there's no question that there are problems and there are people in the lower echelon of the civil service who are concerned about those salaries that are being made, the alleged salaries that are being made, because they don't know, and the perks that are coming. Every once in a while we have a Diamond Dave story, which was one that happened when I first came to this place, and information gets out, the media grab this stuff. That's the only way you're going to find out.

My question to you, notwithstanding the issues that you've raised, and certainly I think you've probably summarized most of the concerns, is the overall issue of accountability. Are we, as politicians, whether provincial or municipal, or school board or sitting on children's aid societies, whoever we are, really accountable when we have no idea what our civil servants are making?

**Hon Mr Charlton:** I thought the issue had been addressed a few minutes ago, but I'll go through parts of it again and add some things to it.

Thirty years ago—I'm not sure how the municipalities or school boards handled it in those days—the salaries of everybody in the Ontario public service were published.

**Mr Elston:** Ten years ago they were all published.

**Hon Mr Charlton:** No, no, no—10 years ago over \$40,000, and 30 years ago everybody was published.

There have been successive administrations in this province that have made decisions that precede us. You've raised the question of whether perhaps those changes have gone too far, and perhaps they have. That's exactly why I said I'd be interested in hearing this committee's comments on the question of salaries and accountability that's attached to those salaries. As a result of a number of other things that have been happening—I don't remember the exact date; late October or early November—the Minister of Finance announced changes to the Ontario Securities Act regulations and announced that the salaries of the top five employees in all publicly

traded corporations in this province would be made public. At the same time cabinet directed me to look at similar kinds of initiatives across the publicly funded sectors in this province—other than the federal sector, obviously, where another government has jurisdiction—to look at provincial salaries and municipal salaries and school board salaries and hospital salaries and university salaries and all of those other publicly funded institutions around which the question of accountability to the public, the payor, is an issue.

1440

I think it's an extremely important issue—I don't disagree with you at all in that respect—and I intend, when my officials come forward with recommendations to me, to pursue the issue. But I would also be interested in hearing this committee's views on that issue in its report as well, because you will hear from an interestingly good cross-section of both officials and the public in your hearings, and I think will be probably in an excellent position as a committee to consider both sides, if you like, of the arguments around that issue.

I refer you to the Minister of Finance's announcement about the salaries of the top five paid people in our publicly traded corporations. That's an issue on which the Ontario Securities Commission held hearings two or three years ago. Feelings on both sides of the issue, in terms of investors who were seeking the accountability and of salary earners who were being asked to be accountable, were very strong, and I think it's useful for your committee to be able to comment to us in hopefully fairly unbiased or less political terms than is often the case in many of our committees. This is an issue that I think all of us have an interest in seeing done correctly and I don't disagree that we've got to get on with doing it.

**Mr Tilson:** You've made this statement before; I think you made this statement some time after the Treasurer, or Finance minister, made his announcement. There may be merit in what he said, although when I brought a private member's bill forward to declare the top five salaries of unions, some of the members, two of whom are here in this committee right now, went berserk.

**Mr Randy R. Hope (Chatham-Kent):** No. We told you they were already public.

**Hon Mr Charlton:** They were public to the people they should be accountable to, the members of the union.

**Mr Tilson:** That's part of the issue, the issue of accountability, and I appreciate your saying you're working on it. Can you tell us what stage you're at? The Treasurer seemed to have no difficulty announcing that without notice with respect to the public corporations, but can you tell us what stage you're at now with these deliberations that you're proceeding with?

**Hon Mr Charlton:** All right, I have to pick up on some of your comments.

**Mr Tilson:** I thought you might.

**Hon Mr Charlton:** My answer will lead to your last point, though. Firstly, the Treasurer didn't announce anything out of the blue. As I said, a very extensive consultation went on, handled by the Ontario Securities Commission, over the course of about a year and a half.



There were papers released, there were all kinds of responses, there were hearings on the issue. But having said all that, there is a cabinet process, as you well know, and once the Minister of Finance had received the recommendations of the securities commission he had to decide whether to accept those recommendations, or one of the options in those recommendations, and proceed through the cabinet process with them, which he did.

I've already said that my officials are working on the issue of salaries in the broader public sector. I hope that within a matter of weeks they will have some recommendations to me. In addition to hearing the recommendations from my own staff, I would be interested in hearing comments this committee might have about that issue. One thing that is clear is that we will require some legislative changes to proceed to deal with the salary questions in both the OPS and the broader public sector because of the two acts that we're talking about here.

Having said that, I am prepared to consider legislative amendments that are suggested around the salaries question by this committee and by my officials and to report back to cabinet, which directed me to do this work.

**Mr Tilson:** The final question I have is with respect to what previously was the law, publishing salaries over \$40,000. Have you addressed whether the government should return, not necessarily to \$40,000, but a certain figure?

**Hon Mr Charlton:** That's part of, or at least could be part of, what we've asked the staff to come back and recommend to us, yes. We've asked them to look at the question of salaries and disclosure of salaries in the public sector and what would be a good model to pursue that under. As I've said, I'm also interested in hearing from the committee in that respect and I'm prepared, once we've agreed on a package, to proceed with the legislative changes that are necessary to deal with that. I first have to get a legislative package approved.

**Mr Norman W. Sterling (Carleton):** I just want to indicate that I'm interested very much in the delay issue. I have found that the freedom of information act provincially has worked more as a shield for the government than as an opening of government and an accountability of government. Even when a member or a member of the public can identify a document specifically and that document lies on the table of a bureaucrat or a politician, our act gives, in my view, far too liberal opportunity for the government to delay the release of that document. In politics, a document today may be worth nothing tomorrow. Timeliness, I think, has to be dealt with in terms of both this act and the provincial act.

You can be delayed up to 60 days under our present act. Sixty days is far too long. It exceeds the time of an election writ period. My view is that timeliness is a very, very important issue in terms of dealing with the release of information.

I think we should look at defining certain kinds of requests which have to be answered in a much shorter time frame, particularly when the person asking for that information can identify a document and that document is known to be there.

The second area which I'm interested in is whether or not we should be taking freedom of information another step. Under the present legislation there is no requirement for any level of government to collect information in a form. I think this has resulted in the fact that there is no more accountability now in government, because the presentation of information is often as important as the information itself.

It's my view that there should be, particularly in the municipal area, possibly in the school board area, requirements by interested citizens in collecting information and presenting it in different forms, in comparative forms. I should, as a citizen, be able to compare the costs of educating a student in the area where I pay taxes against other areas in the province which have similar kinds of population and similar kinds of population mixes.

There's no requirement under our laws today to do that, and I think that both at the provincial level and at the municipal level we should pay some kind of attention to formulating ideas as to how the form of information should be collected; in other words, trying to put forward some kind of process which would allow people to be consulted in order to put that information in some fair form but in a form which the citizenry can understand.

I'm very, very dissatisfied with the way municipalities are required to account to the public. They present a balance sheet at the end of November, I believe, each year, which means absolutely nothing to anybody. They're produced in newspapers across this province. Quite frankly, it's a waste of money in terms of producing them because usually a week or two before that budget is produced there are a number of motions made in councils across Ontario which shift money from one account to another account and other line items so that it will conveniently look all right when it is published.

#### 1450

Therefore, I really believe that in my view there are two issues that are important. I don't find the fees issue that important. Maybe it is for some people. I advocated, when we were dealing with freedom of information at the provincial level, that MPPs should not be required to pay fees for obtaining information. I would extend that in the municipal area to people who are elected as well, because they are accountable in a fashion to the public if they abuse the system by requesting too much information.

I would go along with some kind of exemption for school trustees or municipal officials or municipally elected people who wanted to obtain information from their own municipality under the freedom of information act from having to pay fees.

I do think fees have a role. I've always been a supporter of some level of fees because there are abusers in our system that have to be turned back. We have an abuser at the provincial level, I understand, who has cost the provincial government hundreds of thousands of dollars to date. Individuals like that have to be dealt with.

So I'm very much interested in the delay issue primarily. I'm also interested in perhaps exploring the next level of freedom of information, and that is some outward body or some group of citizens, some interested body,



having some rights to require government bodies to report information in some kind of organized fashion which they deem fair.

**Mr Hayes:** Thank you, Mr Minister and Chair of Management Board, for your presentation. I have never sat on this committee before, but just for members of committee who don't know, I'd like to clarify one issue. When you're talking about the labour leaders, I don't believe the Chair of Management Board or the Treasurer or anyone else really has to do anything there because the leaders' wages are set by the membership at their conventions and it is spelled in their own constitution out exactly what they get paid. I thought I'd make that clear.

**Mr Elston:** As long as the Minister of Finance knows, that's all we care about.

**Mr Hayes:** Well, it's there. But I do feel that when we talk about municipal councils or school boards or anyone, and no matter what level they are, if people are publicly funded, I think the public does have the right to know what their per diems are and expenses and what their salaries are. I don't think you'd have much of an argument from the public. I know I get a lot of complaints from various areas, from individuals who want to go to, say, the municipality to find out things and they really have to go through a lot of red tape and spend money to get the information which those municipalities should be able to just readily make available to them.

But I do also agree that we have to be very careful if there are some frivolous requests that are being made. I mean, I have seen cases where the person got defeated and all of a sudden they want information on the person who got elected, for example, and information maybe that had nothing to do really with the person holding office. You have to be careful on that too, but I do think that, if I want to know how much my reeve makes, I should be able to find that out, and if I want to know how much money is spent on per diems or conferences and things like that, as a taxpayer I should have the right to know that. I think it's something that really merits a lot of discussion and debate probably on this committee. I'm hoping we can continue in the non-partisan way that it has started here today. Thank you.

**Hon Mr Charlton:** I'm going to have to leave, so maybe I could just take a moment to make a couple of quick comments on things that have been said here.

On the issues raised by the last two speakers, the salaries were raised again. We're interested in pursuing that issue and dealing with it, so I'm again interested in hearing the committee's remarks in that regard.

In terms of the issue that Mr Sterling raised around delay, again I'm also interested in hearing the committee's evaluation of that issue after hearing from both sides. Both of these pieces of legislation are now several years old, and that's why we're reviewing them. I sincerely hope that in as non-biased a way as we can, the committee can come forward with recommendations around all of the issues like that, and the fees one.

On the one hand there have to be some fees perhaps. On the other hand, the fees can't, at the end of the day, be a serious deterrent to the legitimate public interest in

some accountability around its public institutions. The recommendations of this committee around what's an appropriate balance are important for me.

The last issue which Mr Sterling raised around perhaps looking at some kind of standard format or standard protocol by which similar institutions are required to report, I think that's also an extremely useful issue for the committee to consider. I know that although I'm not the minister responsible for municipalities or for school boards or for universities or for hospitals, in some of the situations I do deal with in my own ministry, where you're dealing between two or three pension boards or any number of issues like that, having a standard format by which you can measure the information you're getting is oftentimes very useful.

I apologize for not being able to stay longer, but my staff are here and will continue to be. All of those issues that have been raised here so far are important to hear from this committee on. I encourage you, as I suggested, in as open and non-partisan a way as the committee is able, to hear the presentations that come before you and to push them, to talk about both sides of this accountability question so that we end up with improvements to the legislation in your recommendations that perhaps start to address whether in some cases we've gone too far with the legislation as it exists or whether in some other cases it's gone far enough, and finding that balance on all of the issues that come before you. So thank you and good luck with your proceedings.

**The Chair:** Maybe we can have the staff come up here. I know Mr Hope has a question which he's been sitting on for about a half an hour. Okay, Mr Hope, go ahead. And could you please identify yourselves for the purposes of Hansard when you answer?

**Mr Hope:** First of all, I guess as we listen to the minister's comments, I find it very interesting for the simple fact that I know a lot of people I talk to in my riding don't know the freedom of information act is even out there and how they can access their own personal information, whether it be through any large crown corporation of the government or the government itself. Where it's becoming more and more of a light is around the agricultural issue, back in the 1981-82 recession, when they were putting in the trailer mortgages and other issues.

So it's interesting in that we're talking about legislation and everybody starts talking about access to information. My biggest concern through this whole process will be the information being available to the general public, to access personal information, that they have gone through some process with government before and now they don't have the money to afford a lawyer but would like assistance in getting information to see what went on with their case at that period of time.

When we're talking about the public pay issue, I believe it's more appropriate now. It's in more and more of the public's eye right now. They're talking about the wages of individuals. Myself, I have no problem in showing what I earn for the simple fact that I think it's important that the public see exactly what we make. I think it's important to see what the broader community



that is publicly funded receives moneys for, not just because it's a call under the social contract or any others; I always believed that individuals shouldn't be ashamed of showing their wages, at least I'm not ashamed, maybe if more of the broader public were to see what the income was.

But one of the concerns, and I would like to really know, is the claims that are being processed around the municipal end of it. How many of them are really done by law firms? How many are actually done by laypeople and how many are actually done by—no names—lawyers and others who have a knowledge of this freedom of information act out there? That's important. I don't believe MPPS should have any special status, no more than the general public. I believe we ought to be treated equally in terms of accessing information. That's always been my view: I don't believe we ought to have special status.

1500

I'm really curious about the type of field or profession those who are currently making applications are in, whether it's just general laypeople, Jane or John Doe who farm in RR something township, who are requesting information or whether it's some law firm on Bay Street or the member. That information is important as we talk about this act allowing individuals access to information.

Just trying to get information on your own health records is a lengthy and legal process. Now there's been a decision made on it, but if we're to start talking about accessing information, and we're really mean the general public, not professional groups but the general public, I would like the information about how many of the general public and how many from professional fields have requested information.

Brian mentioned the municipal stuff. It's becoming more and more of an issue in rural Ontario as members of the agricultural community now talks about their income. Previously in rural Ontario, farmers would never talk about what revenues they bring in; the financial situation of a family or a family farm was very confidential. It's becoming more and more open, and the deals and issues that happened back in the 1981-82 recession are becoming more of a coffee shop conversation. What people are really starting to ask, and don't know how to access the information, is: "Why was I treated differently from the other individual? What is in my file? What do these big corporations, the government or Ontario Hydro or others, have on me?"

To reinforce it, I would like to try to get a better understanding of who is actually using the freedom of information act and who is not, because those who are not are usually the ones who need help in accessing.

Further to the issue about fees, I don't want to get into special categories, with members or elected officials being exempt from fees, because I'll guarantee that the individual who has to pay a fee will be knocking on my door saying, "Randy, can you carry this through for me and access all this information?" It's just going to go to a back-door approach versus a front-door approach. If we're to be treated as Ontario citizens in accessing information, I believe it ought to be that and not by

elected status or whether you're a farmer or an auto worker or a lawyer in the community.

**Mr Frank White:** I'm Director of the freedom of information and privacy branch at Management Board Secretariat. I can answer the three questions in terms of who makes requests under both the provincial and the municipal act.

The Information and Privacy Commissioner is required to produce an annual report, and he collects statistical information from each institution covered by the statute. As part of that, each coordinator, when he receives a request, tries to categorize the requester as a researcher, media or other categories. That is the type of information the commissioner would produce in his annual report, and he probably will be covering that with the committee tomorrow.

Again, though, it's a question of the information and privacy coordinator in the local institution assessing who it is who is making the request, because the person coming forward doesn't have to identify himself in any way for general information. For personal information they would, but if somebody wants a copy of a certain efficiency report, there's no requirement for that person in any way to identify himself. Either they have a right to that report or they don't in terms of the exemptions under the act. There's no categorization other than six general categories of who is making the request for personal information. That may be helpful to the committee.

For citizens trying to find out what information is available under the Municipal Freedom of Information and Protection of Privacy Act, first of all, the Information and Privacy Commissioner does have a role in public education. Tomorrow when the commissioner testifies, you may ask him about his public outreach program in terms of informing the public about the municipal act and the public's rights under that statute.

Also, each organization covered by the Municipal Freedom of Information and Protection of Privacy Act is required to produce a list of the types of records that organization produces and maintains. There's a requirement to have that publicly available in a local government office or at a library, somewhere locally, where members of the public have access to that to see what types of information are produced by the municipality, by the school board, by the police force. So there are ways of getting that type of information before a member of the public through the Municipal Freedom of Information and Protection of Privacy Act.

**Mr Tilson:** I'd like to ask you a question with respect to access to information. It follows the line Mr Hope raised in his comments about elected officials; in other words, I'm raising the issue about elected officials being exempted from fees. Mr Hope quite legitimately made the observation that if that occurred, elected officials could abuse that process. Constituents could put pressure on an elected official to do something. There's no question that's a legitimate observation, although Mr Sterling quite rightfully said there is a certain amount of accountability, that you have to account for everything you do.

I believe you have legal counsel here. I'd like to raise



the question with respect to part V, particularly section 57. As an opposition critic, I may want to ask a specific question to a minister on a specific topic. To ask that question, hopefully I will be informed. To be informed, I have to get access to documents, and these sections give a certain amount of discretion to—to use the word in the act—the “head,” who is in fact the minister. The minister is given a considerable amount of discretion to waive the fee. What a wonderful way for a minister to avoid assisting a member to criticize him or her, simply by saying there’s going to be a fee.

That fee could be substantial, and there’s no question the regulations are specific about how that fee is calculated. Certainly many municipalities, members of provincial councils, don’t have budgets to pay for that sort of information; they’d have to pay for it out of their own pockets. We at least, as members of this place, have access to funds. We’re trying to be intelligent, which I know the government questions sometimes, and ask questions based on facts, yet the minister has discretion to bump fees up anywhere from \$50 to—I’ve heard of fees being \$6,000, depending on the information and the research required.

My observation, notwithstanding Mr Hope’s observation, which may be legitimate, is what a wonderful way for a head—namely, the minister—to preclude a member from having access to information, because eventually that pot’s going to run dry. Eventually, the moneys that may be set aside by a member to make freedom of information applications could run dry.

1510

Have you analysed that issue and can you assist both Mr Hope and me? Mr Hope raised the question, although he really said the pressure would be on and perhaps they should be charged fees. Can you tell us what analysis you’ve made of the issue of exempting members of this Legislature, or municipal officials, who don’t have the funds we have, to be exempted from paying those fees?

**Mr Frank White:** What you’d have to do is look at the fee waiver conditions and the fee section of section 45. Your fee waiver conditions are in subsection 45(4). It would be 57 in the red one. That would be the same section.

First of all, any time there’s a request, the institution is required to search for two hours free of charge for that record, and it’s only at that point that fees kick in for searching; then there are fees that are identified in the fee schedule. But the only fees are for searching for the record. Once I locate that record—say it’s this report—then any decision-making time that goes into determining whether there’s an exemption that applies to the whole report or part of the report isn’t calculated in your fee estimate. That’s all without charge to the requester.

**Mr Tilson:** But as someone who uses this process, and I can tell you I don’t believe I’m using it in a frivolous fashion, I’ve made a number of freedom of information applications since I’ve come here and I’ve discovered that some ministers waive the fees and other ministers don’t. Whether it’s the mood or whatever—I don’t have my record with me of who specifically waives them—there doesn’t seem to be any set pattern. It seems

to be at the complete discretion of the head, who is indeed the minister.

I believe there is too much discretion given to the minister, that the minister could abuse his or her discretion in determining whether fees, whether it be \$50 or \$5,000, will be charged. I don’t know whether you have analysed that issue.

**Mr Frank White:** No. The other situation is that under the municipal statute, it’s the head who’s making those decisions. The head is at the local level, so it’s this person in a municipality, this person in a school board, this person in a police force. If you look at all the organizations covered under the municipal statute, there are about 2,300, 2,400. With that wide range of individuals making decisions, you’re bound to get a—

**Mr Tilson:** I’m zeroing in specifically on elected officials. You could compare. There are certainly small municipalities that don’t have elected councillors or trustees or whatever and don’t have a budget for this sort of thing. They would in fact be precluded from finding out information about their own municipal council, let alone ministries. Anyway, it’s an issue that I feel is open to political abuse.

**Ms Priscilla Platt:** I am Priscilla Platt, legal counsel at the freedom of information and privacy branch. Briefly, in answer to your question, in section 45 in the municipal act and section 57 in the provincial act, subsection (4) is rather unique because it does provide criteria for the exercise of discretion. It’s different from other aspects of the legislation; for example, discretionary exemptions where there are no criteria listed. In those, the denial of the waiver may be appealed to the Information and Privacy Commissioner, which does act as a check on what you were suggesting is possible in individual cases perhaps, a capricious denial of the waiver option. There have been instances where the commission has decided that the head has inappropriately considered this matter and has in fact ordered that the waiver be applied. If that’s of any assistance to you, it’s certainly an option.

**Mr Tilson:** I’ve gone that route. In fact, there’s an appeal under process right now. This happened months ago, and my application happened months before that. The issue has long since died. It involved a toxic waste site in Peterborough. When an issue arises, I need that information now to ask intelligent questions of the minister, yet I’m being stymied by a whole process, and I went through that process.

You read section 57. I don’t know what 45 says—

**Ms Platt:** It’s identical.

**Mr Tilson:** But just looking at 57, with which I am familiar, subsection (4) says, “A head shall waive the payment of all or any part of an amount required to be paid under this act where,” and then it uses the words “in the head’s opinion.” The minister can do anything he or she pleases; they can twist these words around. I don’t know whether they are, but I believe they are, because some ministers charge and some ministers don’t. That’s my only observation.

It’s not only that. To get back to Mr Sterling’s issue, it’s the period of delay of the whole process. I made an

appeal and the decision still hasn't been rendered. I was promised it by the end of 1993, and we're now into 1994. I don't know when or if the decision's ever going to be made. I'm sure it will; they've said it would. But my point, to reiterate what Mr Sterling was saying, is that we need that information now, and yet we're stymied, the issue's all over. I don't know whether you have any comment, but I believe there's a problem for me doing my job, specifically as an opposition critic, because I can't get the documentation to ask the intelligent questions I should be asking.

**Mr Drummond White (Durham Centre):** Just a brief comment and question with regard to Mr Tilson's points, and I think they're very important. I read section 45, in his book section 57, and it seems to be an incredibly detailed section for an act. It clarifies this very important issue, because of course it could be used capriciously, as was suggested: The whole issue of a fee and the level of a fee and conditions of a fee it could be used as a barrier to important information.

Mr Tilson's concern I think is a very legitimate one. His privileges as a member could be seriously impugned. For that reason, I'm concerned that this not be the case. Mr Tilson is indicating that he feels this is a problem with some ministries and perhaps not with others, and he's also indicating that some ministries may respond more rapidly than others.

To Mr White, I'm wondering whether we have any knowledge, any kind of survey or information, with regard to which ministries tend to charge, under what circumstances, and what the turnaround time is for these requests. Do we have that kind of information? I've not had the kinds of problems Mr Tilson's talking about, but he's making some statements about certain ministries not responding rapidly. If that's the case, as parliamentarians we need to know. Is there any kind of information on the different ministries in terms of their response time and the likelihood of there being a fee charged.

**Mr Frank White:** The only information we get would be the summary of the annual reports provided to the Information and Privacy Commissioner, which gives the total amount of fees charged by each organization covered by either the provincial or municipal act. It would just be a total. I don't think there's been any assessment on an individual request-by-request basis.

**Mr White:** So it would be a total of fees per ministry.  
1520

**Mr Frank White:** Yes. That information would be provided to the Information and Privacy Commissioner. So at the end of the year, the city of Toronto, for instance, would say, "We've charged \$2,000 in fees," and is also required to report how much it has waived. The information is available. I think you'd have to ask the commissioner whether that's been compiled yet.

**Mr White:** I see. And that would be available by institution and by ministry?

**Mr Frank White:** It should be assembled by institution, if it's ever been reported.

**Mr White:** So from that we should be able to get a sense of the legitimacy of Mr Tilson's concerns.

**Mr Frank White:** Well, in the report that local governments submit to the commissioner, the time lines used are answer to request within 30 days, and then 30 to 45. It doesn't go beneath the 30 days, to see if someone's responding in 10 days.

**Mr White:** So we do have criteria to measure the speed with which a response is given and the amount of fees.

**Mr Frank White:** Up to the 30 days, yes.

**Ms Platt:** The other thing you might want to check is the decisions of the Information and Privacy Commissioner. To the extent that fees are appealed to the commission, the commission is required to issue a decision, so by tracking the decisions—if you just look at the bold numbers, you won't necessarily know whether those are inappropriate fees or not; they may be quite appropriate. But reading some of the commissioner's orders in this regard may give you a flavour for what institutions are doing what and what the criteria are.

**Mr White:** I am very concerned. I personally have not had a problem like this, but if Mr Tilson has, then his privileges as a member might have been seriously compromised. I'm glad to hear we have some criteria to measure that.

**Mr Sterling:** I'm pleased to see Frank White again. I've known him for a long time, and it seems neither he nor I can shake this freedom of information and privacy stuff.

**Mr Frank White:** I don't want to shake it, though.

**Mr Sterling:** I guess not in these times, anyway, Frank. You're both under the ministry of Management Board. Could you tell me what its specific role is vis-à-vis this act? With regard to the provincial act, I know you're the coordinating body. What is your role with regard to the municipal act?

**Mr Frank White:** It's a similar type of role. We provide advice on the Municipal Freedom of Information and Protection of Privacy Act to local government organizations that are covered by the act. If there's a question about fees, if there's a question about exemptions, if there's a question about delegation, we provide advice to those organizations, to the individuals in the organizations who are trying to interpret the statute to make decisions on requests for records.

**Mr Sterling:** So you're really an adviser role, not a decision-making role, in the municipal area.

**Mr Frank White:** No.

**Mr Sterling:** Have you prepared for us in any way what your sense is of the problems that municipalities are having with the act? Are there some glaring areas where there's uncertainty?

**Mr Frank White:** Mr Sterling, I think those are the areas generally that the minister covered. Those are the types of issues we hear, in terms of advice, where there are some uncertainties. I think the next week and half would be the chance for these local organizations and citizen groups to come in and explain where they feel improvements could be made.

**Mr Sterling:** Unfortunately, I arrived a few minutes



late. The minister didn't hand anything out, did he?

**The Chair:** No, he didn't.

**Mr Elston:** You have to get that under freedom of information.

**Mr Sterling:** Yes. I wonder if you have anywhere composed a list of the sections in the act where there are questions or problems, that perhaps the minister mentioned in his remarks. I'm more interested in having some kind of reference document as I listen to the various proponents.

**Mr Frank White:** We could get a copy of Hansard and key the sections that relate to that issue from the minister's speech.

**Mr Sterling:** Would you do that for us, please? Could you key the sections for us so that when groups come before us we'll know which ones they're likely to point to, that kind of thing?

**Mr White:** It might take a couple of days before Instant Hansard's available.

**Mr Frank White:** We can have something tomorrow morning.

**The Chair:** The problem is that when the minister gave his speech, he added comments, so if we get a copy of his speech it won't be complete. And there are five committees sitting this week.

**Mr Sterling:** I was more interested in having: section 23(2), possible problem such and such. Where there have been a lot of questions raised by municipalities, obviously you as the advisers would have the greatest knowledge that you're getting a lot of questions about this or that particular section. If there's a question of clarifying a section, then I think we should try to do that.

**Mr Frank White:** What we could do is get a list of those issues the minister raised and put in the sections that deal with those issues. You can in fact say there are constantly questions about almost every section.

**Mr Sterling:** So there's no one glaring issue overall? Are there one or two key issues that have been raised with you, as advisers?

**Ms Platt:** Many of the issues are generic to both acts, but the one thing that is unique to this act is the open/closed meeting exemption, which is section 6 of the municipal FOI act. That was something mentioned by the minister as well this morning and this afternoon.

**The Chair:** Before we go on, I'd note that we're going to have a subcommittee meeting immediately after comments and questions. Members on the subcommittee, be here for the subcommittee meeting.

**Mr Tilson:** This question's really been asked by Mr Sterling. That is, you've commented on the private session meetings, specifically of municipal councils. Many of us in this committee have at some time in our careers sat on a municipal council, and I certainly remember sitting on a municipal council when someone makes a resolution to move into private session to discuss property and personnel matters, or some general generic phrase, but someone starts talking about something else and it may or may not come out. That's been one of the criticisms of ratepayer groups, that things go on in that

meeting and you don't know what it is.

The minister listed areas of concern; I have seven, but he may have listed more. I think committee members would find it useful if you were able, from correspondence you've received from ratepayer groups or councillors or trustees or anyone involved in the process, to perhaps elaborate on which are the most serious concerns or issues that have been drawn to your attention.

**Mr Frank White:** I'll get a prioritized list together of those issues and the sections that deal with those issues.

If the committee is interested, either today or at some other point, we're prepared to do about a 20-minute quick overview of the Municipal Freedom of Information and Protection of Privacy Act. I make that offer.

**Mr Tilson:** Are you able to elaborate now on the various issues the minister has referred to? Are you able to tell us that now, rather than putting it in writing? There must be issues that have cropped up more. You've mentioned the private session meetings. Have some issues come to your attention more than others?

**Mr Frank White:** I think we can point to the issues that the minister raised and point to the section of the act and why it's an issue, if you want us to do that.

**Mr Tilson:** When we're talking about a review of this act, I'd like to hear specific complaints from people other than clerks or chief administrative officers: perhaps members of the public, perhaps ratepayer groups, perhaps individual taxpayers, perhaps councillors. You must have received correspondence from people expressing concerns.

1530

**Mr Frank White:** Why don't we give an example and see if that's the information you're looking for and what you want to do, if that's a good way of exploring it? I'd ask Priscilla to take you through section 6 of the Municipal Freedom of Information and Protection of Privacy Act, which has an exemption dealing with records of closed meetings.

**Ms Platt:** Section 6 is a discretionary exemption. There are two types of exemptions under the act: One is mandatory and one is discretionary. Discretionary exemptions give the head the power to provide access or disclose the record if they wish, even though they may have the exemption apply to that record. They have the power and the right to disclose the record despite the application of the exemption to that record.

Basically, it's a timeliness element to the exemption in subsection (1). Subsection (1) deals with records that have been held in a closed meeting where the exemption may apply, and the exception in subsection (2) states that the exemption cannot apply, essentially once that subject matter has been deliberated in an open meeting. Theoretically then, the exemption would apply once there has been a closed meeting, but once you've gone into the open meeting to confirm or deliberate the issue, the exemption cannot apply. And even where the exemption does apply, it is a discretionary exemption.

The matters that have been requested under closed meeting exemption have been the subject of a number of appeals to the Information and Privacy Commissioner.



What's come out of that is that there are different words used in subsection (1). It talks about "reveals the substance of deliberations of a meeting of a council, board" etc. You have to have the authority to hold it in a closed meeting, but it uses the language "reveals the substance of deliberations." The exception talks about where the subject matter of the deliberations "has been considered" in an open meeting. There is some debate about what those words mean, whether a perfunctory reference in an open meeting to something that has been handled in a closed meeting is a consideration and therefore where the exemption would not apply.

If one looks at the commissioner's orders thus far and some of the language used in section 6, I suppose that language is vague enough to have caused the commissioner to look at it and question the meaning or the intention of the Legislature in that regard.

**Mr Frank White:** The other issue with it would be that this goes back to the statutory authority for a closed meeting, so you'd have to go back to the specific statute that authorizes the closed meeting. Some of the statutes which authorize closed meetings are very restrictive, such as the Education Act, and some are very wide, like the Municipal Act. So it could be a very different outcome, depending on whether you're going to a local board or a municipality, in terms of what records you may get and in terms of how wide the scope is for holding a closed meeting.

The other issue is that if it is never a matter of public debate in terms of making a decision, if it has not been considered in an open meeting, then the records would never be disclosed unless they're 20 years old. It has to be considered at an open meeting for this closed meeting exemption to be removed, and if it's never discussed at an open meeting, then the records remain closed in terms of the exemption.

Dealing with open and closed meetings and records for open and closed meetings, those are the issues one would get into. Obviously, from the public's point of view, there's wide latitude in terms of the closed meeting laws and the records they wouldn't get from those.

**Mr Paul Wessinger (Simcoe Centre):** I don't know whether this is an appropriate time to deal with the matter, but Mr Elston raised the question of hearing from Ministry of Health officials. I was going to suggest that perhaps we should request the presence of those officials after the hearings have terminated. That would be on Tuesday, January 25, after we hear again from the Information and Privacy Commissioner's office. I think it would be very useful if we heard at that time from the Ministry of Health officials with respect to the whole question of the right to access information.

**Mr Elston:** I have no objection to hearing from anyone. The only thing I want to make sure of is that we're actually pursuing with some degree of certainty that we want to add these other people, or are we considering just taking information about how we should give ourselves a little better access to information there? If it's only going to be an update from them that they've got legislation on the horizon or something like that, maybe they could indicate that and then they'd just need

to give us a written presentation.

It was really in response to the minister raising the issue of possibly adding children's aid societies and hospitals and other organizations that I thought if we even came close to doing it, we've got to have them here to speak to them about it. If there's something they can help us with, then by all means, I'm happy to listen to what they have to say, but if it's something they could provide to us in writing as an update on their undertaking to have their own separate freedom of information procedures, then I'd be happy to hear it that way as well.

**Mr Wessinger:** I notice some presenters are, for instance, from the Psychiatric Patient Advocate Office and the Ontario Psychological Association, so I gather we will be having some presentations with respect to health matters. I only made the suggestion today to alert the ministry to perhaps the necessity of them coming or preparing something, rather than wait till the end of the hearings. That was the reason for the suggestion today. Otherwise, I would have waited until the end of the—

**Mr Elston:** Is that in the mandate of this inquiry? Are we supposed to ask ourselves during the inquiry into this act if we should extend it? I thought the inquiry was basically whether or not this act as constituted is functioning well to provide information in the areas it covers and is protecting privacy adequately in the areas we're dealing with. But if it now is that we're supposed to see whether we should extend it to other areas, I think that becomes a different task, at least from what I was preparing myself for, in any event.

**The Chair:** I should maybe have read this out at the very beginning: "The standing committee of the Legislative Assembly shall, before the 1st day of January, 1994, undertake a comprehensive review of the act"—it's the word "shall."

**Mr Tilson:** You missed it.

**The Chair:** Well, no. We already started it back in December when we were discussing it in committee.

**Mr Elston:** Technically, you might be right.

**The Chair:** It was started, because we'd already planned for the hearings. To continue: "undertake a comprehensive review of the act and shall, within one year after beginning that review, make recommendations to the Legislative Assembly regarding amendments to this act."

**Mr Elston:** I understand that, but the act itself doesn't cover hospitals, so I was asking the question of whether we are really, in this hearing, because we only have a week of hearings planned and a week to write our report, considering extending the operation of this act to these other organizations. That really is a different task than just listening to whether or not we are functioning well under it.

**The Chair:** The way it looks, it's the existing act the way it is and recommendations—

**Mr Elston:** Mind you, you can always amend it to add areas of coverage. I just think it's a different task from what I thought we were here to commit ourselves to. I'm not saying we shouldn't do it. I'm just asking the question so we can start preparing to ask people who are



here if they've had any other experience with children's aid societies or with hospitals or whatever. It's a whole series of different questions you have to ask yourself about extending the application of an act, as opposed to the questions which basically have been here today: What's the problem with the municipal response to requests? Are there problems with fees under the current act? Those really have focused just on things as they are today.

I'm happy for us, maybe in subcommittee, to talk about the question of whether—I guess it doesn't really matter, because we're just going to write a report and I suppose we can write anything in the report we have to, but I would be much happier hearing from anybody who we think might be affected by this at the end of the day.

**Mr Wessinger:** I'd like to add that I'm really just responding to the minister's comments when he indicated that one of the issues was whether the act should be extended to cover other institutions.

**Mr Elston:** It surprised you too, eh?

**Mr Wessinger:** I agree that we could discuss this in subcommittee. That certainly would be satisfactory.

1540

**Mr Hope:** I don't believe we should shut the doors; if I understand Mr Elston correctly, he's talking about the subcommittee. If we get presentations from people who are going to be here from other institutions that may not be covered or that have been covered through a legal battle asking for the government to consider and to move on other areas, we have to leave that door open. We might have to pursue changes so we don't lead into bigger problems later on.

If we're having presentations from some of the institutions, I thought it would be nice to alert ministry staff to questions about where they're at and more detailed questions after the presentations. I don't know of particular circumstances around health issues, and it would be important to have ministry staff on the sidelines, as you might call it, so that if issues do arise from the presentations, we can then ask ministry staff where they're at or if they're anywhere. We might want to put in the body of the report that it might be—if I heard you correctly, in one year—the next endeavour to deal with these hot issues that are going to be coming up.

I would like to have ministry officials—but I hear you're going to discuss it in subcommittee—on the sidelines or on standby if need be on Tuesday so we can ask specific questions that might be raised by the presenters. We're seriously going to be listening to the presenters, and I'm sure there will be questions we won't have answers for.

**Mr Elston:** On the same point, as the minister raised the issue, perhaps Mr White could provide us with an update in written form or whatever on the areas Mr Charlton raised as potential areas for expansion of coverage. I think children's aid societies were one.

**Mr Frank White:** There were three: universities, children's aid societies and hospitals.

**Mr Elston:** I do know that at the time we did this the hospitals were going to do their own; that was basically

the way they removed themselves from coverage. I know it hasn't occurred yet, but maybe there is something cooking that we should know about. That would be at least one of the items to follow up on, as there had been, in my understanding, an undertaking that certain things would occur. Perhaps we should have some update on that. If that's available now, fine. If not, then we could get it at some stage.

**Mr Carman McClelland (Brampton North):** I wanted to perhaps underscore or amplify Mr Elston's suggestion. To look at the history of what happened a few years ago, specifically 1991, when the same committee undertook a review, if you look at recommendation 3 in the report you have in front of you, it was almost like a knee-jerk reaction—I say "almost," and that's the operative word, and I don't say this in a pejorative sense—to suggestions being made that there be an extension to the act. There was a sentiment that yes, it should be extended. Quite frankly, there wasn't any real meat to the discussion. It was a sentiment as opposed to a comprehensive review.

I think that underscores the point Mr Elston's making, that if we are going to do that it should be done in a very thoughtful, systematic, detailed way, with a great deal of expertise brought to bear on the issue of the extension. We've had the three identified by the minister's as illustrative of it.

If you contrast that with recommendation 3 the committee drew up in 1991, and even in part recommendation 4, I think that is fairly substantial evidence that you can make some nice noises and do some broad strokes of the brush, but you're not really dealing with the issue unless you are prepared to sit down—and perhaps that's the work of the subcommittee—to thoughtfully determine how you're going to review the extension of the act and the scope of that extension.

**Mr Tilson:** I'd like to get back to the area I was on originally, and it has essentially been asked again. Mr Charlton has given us six or seven examples, and you indicate that you're going to prepare something in writing elaborating on those points. We're going to start tomorrow. You started to go through and tell us the legalities of number 6. I understand that, and I think many of the members of the committee do. I would like to know, more specifically, what some of the complaints have been, and we can even talk about private session meetings: specific complaints from municipal councillors or others about that issue, or indeed any of the other six issues that were raised by the minister.

**Mr Frank White:** I think when we discuss it with you, what we would discuss are the questions we get concerning the interpretation. Typically, we're not going to get complaints. If someone is dissatisfied with the statute and how it's being interpreted because of a result they've received in response to a request, they're going to go to the Information and Privacy Commissioner. The commissioner is the one who hears appeals and rules on the appeals in terms of whether the record is going to be released or not released. Generally, we get questions like: What does this section mean, or how does it affect disclosure of this particular record? It's not "I'm dissat-



isified" with whatever. In a few of these, that is the case. In terms of the question of how one handles a frivolous or vexatious request, for instance, when an institution asks for advice, I guess that is a way of complaining.

**Mr Tilson:** All I'm saying is that someone has advised the minister of these six or seven issues and I would like to know how he came to that conclusion. Presumably, someone has been complaining about it or someone has drawn it to his attention.

**Mr Frank White:** Yes. These are the types of questions that are received from institutions that are covered by the act; for instance, in terms of getting a frivolous request or a vexatious request, how do we go about responding to that or how do we determine whether it is frivolous?

**Mr Tilson:** Are you prepared to give us a presentation on any of those items, more elaboration?

**Mr Frank White:** Sure.

**Mr Tilson:** When are you going to do that presentation?

**Mr Frank White:** It would be up to the committee.

**Mr Tilson:** How long will it be? I thought that's what we were doing this afternoon.

**Mr Frank White:** Twenty minutes or so.

**The Chair:** Are you prepared to go ahead now?

**Mr Frank White:** We can talk about the issue if you want us to.

Let's start with the frivolous and vexatious request. That was the first one the minister mentioned. Actually, Mr Elston was quite right in saying that what's frivolous and vexatious to me may not be frivolous and vexatious to him. The problem, though, is that for many institutions covered by the statute, they feel they are getting requests where the requester is not particularly interested in the content of the response, but it's just to in some way disrupt the work capacity of the organization receiving the request. They know there are two free hours of search time and they'll put in a batch of 50 requests.

Is the institution receiving that required by the statute to search for those records, for each request, for two free hours? You get a batch of requests that's five pages long and there may be 60 lines on there. They've created 60 requests, and if you treat each entry as a separate request, each one of those requests is worth two hours of free search time so they've got 120 hours of free search time. The end of all that may be that there may be a fee estimate going out to the requester once they've identified where the records are in the volume of records, and the requester can just back away at that point. There's no onus on the requester to go ahead with the request once they get a fee estimate.

From an institution's point of view, if this is a frivolous and vexatious request, where do they go to stop the system, to say: "Yes, I agree with you. This is frivolous. Don't proceed"? Right now in the statute there's nothing. You receive a request and you process it. There's nothing to stop that request.

For many institutions, particularly small boards covered by the statute, this ends up to be a significant

problem. We have a request where there's been an order of the Information and Privacy Commissioner, one page only, faxed to all the police forces in the province. It asked for a copy of all job descriptions, all operational policies, all operational procedures, all—it just goes on and on for a page. Each one of those police forces had to spend two hours of search time searching for the records, to start with. They also had to prepare decision letters on fee estimates, if there were fee estimates. To them, it presents a workload problem.

On the other hand, if I'm a requester, I don't feel I'm putting in a frivolous request; it's not frivolous to me. I think most of the citizens of the province want to be responded to quickly with a speedy answer in terms of the request for information.

In terms of a frivolous request, where do you go if you feel you have this type of request? Is there any way to stop the system if it's determined that that's the nature of this particular request?

**Mr Elston:** Can I ask a question? What do you do if ratepayer X walks into your municipal office and stands there and talks to you for four hours? That happens too, so what do you do? Is that frivolous and vexatious? For me, it's a very difficult call to make, to say when it's happening.

**Mr Frank White:** I agree.

1550

**Mr Elston:** I could understand somebody, for instance, doing this freedom of information request on policing and deciding that they are going to take a major initiative on trying to standardize for all of the police forces across the province operational things. Some people have a whole idea about trying to coordinate, because they feel they've been dealt with unfairly in one area and not in another.

So who do you go to? Are you now going to have a frivolous application appeal system and hire somebody else so that the clerks can say, "I've had 60 requests from one person; therefore, now I can say they're frivolous and I don't have to answer"?

What happens to the guy who has just received his assessment notice and has been told by the assessors that he has been compared to three other places in the municipality and as a result his house is now assessed at twice what it used to be? He asks, "Who do you compare me to?" and the assessors say, "Sorry, under the freedom of information act, we're not allowed to tell you that," which is absolutely, in my mind, a corruption of the whole proceeding, because if he is now comparable to certain other properties, he should know which ones he's been compared to, to figure out whether or not it's been a fair assessment. It's just the law of natural justice. It seems to me it would be required to give that information to the person.

The only option that person would have is therefore to go and say to the clerk, "Who has an assessment comparable to mine in the municipality?" All the assessment information is available, it's public, but you could make that request to the clerk and say: "You search. The assessors won't tell me." It may take me 75 requests



before I find out information about whether or not I'm assessed the same as Mr Ramsay on the 7th Concession.

There are reasons people will make volume requests. If they can't get it one way, they'll try and get it another. I am really quite concerned that we could actually, by putting a definition of "frivolous" that might correspond to the number of requests made or the persistence of requests made, end up shutting down a person's right to know how he or she has been treated in comparison with the rest of the ratepayers. It's very, in my mind anyway, quicksand-like once you start treading on it.

**Mr Sterling:** Do you have any suggestions how you deal with this? Have you thought about it at all?

**Ms Platt:** We have thought about it. I think Mr Elston has made a very good point, that coming to a definition and having it applied and having an appeal and so on is probably a protracted way of dealing with it.

One does get the sense, and it's something the committee will have to determine, that if there were a small fee, perhaps a small application fee, that would deter individuals from making a request like the one we just heard about to every police force in the province and so on. That's something the committee would have to determine, but those are some thoughts we've had on it.

**Mr Hope:** I want to stay focused on this frivolous stuff. For instance, I may be in jail and may have a lot of time on my hands, and I request the drawings of the jail and how many breakouts there have been over the last 30 years. Come on. You're going to respond to that? If I'm asking for plans of the building and you respond and give them to me—

**Mr Elston:** That's already been done, on more than one occasion.

**Mr Hope:** I understand what you're saying about frivolous, and I know the fee issue is something we as a committee have to discuss. But I'm looking at the one individual file, somebody who has time on his hands, and most of them study to be lawyers when they're in jail. They have time on their hands and they're making the one application, which is a very constructive application. How would you label that?

**Mr Frank White:** I haven't heard of any situations where someone's asked for advice and that's been used as a frivolous request example. It's typically when the same request is sent out to multiple organizations at the same time. Typically, in some of these vexatious requests, individuals have said the reason they're doing it is just to add an extra workload on the organization. They've publicly stated this. They've been interviewed by the media to say they're quite pleased with the results in terms of the amount of effort that has to be made by the local government organization to respond, that it's really not the information they're interested in. I don't think most local government organizations would characterize a request by an individual for their personal information as any type of vexatious or frivolous situation.

**Mr Hope:** When you're dealing with a personal information request being frivolous versus a public issue like policing or stuff like that, the fee might address it. But I was looking at the individual saying: "Well, I'm not going to ask everybody. I'm going to ask one institution some information. I happen to be an occupant who has rental space inside of building and I want drawings." Is that not considered to be frivolous? I'm taking three scenarios here.

**Ms Platt:** I think it just underlines how difficult it is to come to a definition of what is frivolous. Depending on why you want it, it may be quite legitimate that you need these plans for a tender purpose or for some other purpose, and it may be quite rational. Things that happen in the context of frivolous is that the person is making repeated requests even to the same institution over and over again for material they may already have received or is asking every institution for the same number of things and has no intention of paying for it. If you give them a fee estimate, they won't pay it. That's the kind of experience institutions have had and brought to our attention.

But how one deals with that in terms of the legislation, we don't now ask requesters why they want the records; we don't scrutinize the reasons or the utility of the records. The act is very broad in its application to any recorded information that the institution may keep in its custody or control, so there really isn't an easy mechanism for asking. How would you police that? How would you ensure that the people really expressed themselves well and said what they wanted, or perhaps didn't?

One thought we've had, and again it's up to the committee, is this idea of a small application fee, because one gets the feeling with a lot of these people that if they had to pay even \$5 they would cease doing that, that they really wouldn't pursue it for any money at all. One does have to balance the right of access for individuals of goodwill versus the expense and so on to the institution and the problem that these frivolous requests do cause.

**Mr Hayes:** I think Mr Elston has a very good point, but I'm just wondering, are we looking at something similar to what had to be done with the OMB, for example, a number of years back, where people were charged a certain fee? In pretty well every community, there's usually someone who's going to appeal, especially if it doesn't cost any money. Are we looking at something similar to that?

**Mr Platt:** I think it is comparable to a lot of the steps that have been taken with respect to tax appeals and other administrative tribunals that have begun charging fees to applicants to ensure that they do intend to pursue it in a timely fashion and so on.

**The Chair:** Any more questions or comments? Seeing none, we'll adjourn until 10 o'clock tomorrow morning.

The committee adjourned at 1558.







## CONTENTS

Monday 17 January 1994

<b>Municipal Freedom of Information and Protection of Privacy Act \ Loi sur l'accès à l'information municipale et la protection de la vie privée</b> .....	M-127
--	-------

### STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

- \*Chair / Président:** Hansen, Ron (Lincoln ND)
- \*Vice-Chair / Vice-Président:** Wessenger, Paul (Simcoe Centre ND)
  - Dadamo, George (Windsor-Sandwich ND)
  - Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)
  - MacKinnon, Ellen (Lambton ND)
  - Mathysen, Irene (Middlesex ND)
- \*McClelland, Carman** (Brampton North/-Nord L)
  - Morin, Gilles E. (Carleton East/-Est L)
- \*Sterling, Norman W.** (Carleton PC)
  - Sullivan, Barbara (Halton Centre L)
  - Sutherland, Kimble (Oxford ND)
  - Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)

*\*In attendance / présents*

#### **Substitutions present/ Membres remplaçants présents:**

Cooper, Mike (Kitchener-Wilmot ND) for Mr Dadamo  
Elston, Murray J. (Bruce L) for Mrs Sullivan  
Hayes, Pat (Essex-Kent ND) for Mr Paul Johnson  
Hope, Randy R. (Chatham-Kent ND) for Mrs MacKinnon  
Ramsay, David (Timiskaming L) for Mr Morin  
Tilson, David (Dufferin-Peel PC) for Mr Villeneuve  
White, Drummond (Durham Centre ND) for Mrs Mathysen  
Wiseman, Jim (Durham West/-Ouest ND) for Mr Sutherland

#### **Also taking part / Autres participants et participantes:**

Management Board of Cabinet:

Charlton, Hon Brian A., chair  
White, Frank, director, freedom of information and privacy branch  
Platt, Priscilla, legal counsel, freedom of information and privacy branch

**Clerk pro tem / Greffière par intérim:** Manikel, Tannis

**Staff / Personnel:** Swift, Susan, research officer, Legislative Research Service





M-13

M-13

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 18 January 1994

# Journal des débats (Hansard)

Mardi 18 janvier 1994



## Standing committee on the Legislative Assembly

### Subcommittee report

### Municipal Freedom of Information and Protection of Privacy Act

Chair: Ron Hansen  
Clerk: Lisa Freedman

## Comité permanent de l'Assemblée législative

### Rapport de sous-comité

### Loi sur l'accès à l'information municipale et la protection de la vie privée

Président : Ron Hansen  
Greffière : Lisa Freedman



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Tuesday 18 January 1994

The committee met at 1011 in the Trent Room, Macdonald Block, Toronto.

## SUBCOMMITTEE REPORT

**The Chair (Mr Ron Hansen):** I bring to order the standing committee on the Legislative Assembly reviewing the Municipal Freedom of Information and Protection of Privacy Act. We'll start off this morning with the report on the subcommittee meeting that took place last night. I'll read into the record the recommendations from the subcommittee.

"Your subcommittee met on Monday 17 January 1994 and agreed to recommend the following:

"On the review of the Municipal Freedom of Information and Protection of Privacy Act:

"(1) The research officer should contact legislative counsel to determine whether the act may be amended to include the hospitals, children's aid societies and universities and whether the clinical records may be sectorised out.

"(2) The research officer will prepare a summary of the presentations received during the hearing.

"(3) The clerk will schedule the people who called in for appointments on Monday 17 January.

"On the interviewing process of the Environmental Commissioner:

"(1) The draft advertisement prepared by human resources was amended to include 'The knowledge of French language would be an asset' and 'A copy of the job description is available upon request.' The draft ad, as amended, was approved.

"(2) The ad will be published in Ontario papers only.

"(3) The deadline for application is 11 February 1994.

"(4) The applications will be available to all committee members for review.

"(5) The committee should establish a subcommittee to select the candidates and to conduct the interviews and to report to the committee with its recommendation."

Do I have the endorsement of the committee on this report?

**Mr Wayne Lessard (Windsor-Walkerville):** With respect to point 5 on the interviewing process for the Environmental Commissioner, I can indicate that there wasn't unanimous agreement with respect to that. It was my position that we shouldn't establish a subcommittee.

**The Chair:** First we'll move the adoption of the committee report and then we'll get into your concern, Mr Lessard.

**Mr Jim Wiseman (Durham West):** When you adopt the report, do you not also adopt number 5?

**The Chair:** No. What we'll do is move for adoption of the report and then there can be an amendment.

**Mr Murray J. Elston (Bruce):** Just to make things a little bit easier, I move that the first item, "On the

review of the Municipal Freedom of Information and Protection of Privacy Act," the report of the subcommittee be received and adopted by the committee.

**The Chair:** All agreed? Agreed.

**Mr Elston:** I secondly move that the second item on the report of the subcommittee be adopted, as recommended by the subcommittee to the committee.

**Mr Lessard:** As I indicated, there was a meeting of the subcommittee with respect to the appointment of the Environmental Commissioner, but there wasn't an agreement with respect to point number 5 about the establishment of a subcommittee to select candidates. It was my position that the full committee should be making a short list after being provided with the names of all of the candidates and that the interviews themselves be conducted by the entire committee as well.

The legislation provides that the appointed person, the Environmental Commissioner, is an employee of the Legislative Assembly. They're responsible to report to the Legislative Assembly. It's important that all the members of the legislative committee take part not only in the short-listing process, in reviewing all the applications, but also in conducting interviews and making a recommendation to the assembly.

**Mr Elston:** When you've already chosen—

**The Chair:** Excuse me. Mr Sterling.

**Mr Norman W. Sterling (Carleton):** This will be a departure from the normal route this committee has taken in picking people for these kinds of posts. I see Tom Wright, the Information and Privacy Commissioner. The choice was a unanimous choice by a subcommittee, by all three parties, which was done also with the director of the library and the legislative research area by this committee. I served on both of those committees as well.

It's my view that in order for an officer of the Legislative Assembly to have the support of the Legislative Assembly, that person should be chosen by consensus by all three parties. It should not be put in by the will of the government. It is my view that perhaps at this point in time, the government has already made its choice as to who the Environmental Commissioner shall be.

When this motion was referred to the committee, I assisted our House leader, Mr Eves, in redrafting the motion, because at that point in time the Minister of Environment and Energy wanted to have the right to recommend people to this committee to be considered. In other words, it appeared from the motion that he wanted at that point in time to control who might or might not be the Environmental Commissioner. Therefore, it seems to me that the government is trying to railroad its own appointee into a position which heretofore, in terms of the practice of this committee in picking these kinds of people, has been done by consensus, by a vote, basically each party having one vote.

The idea that a commissioner be chosen by one party,

perhaps being opposed by the other two parties, is going to lead I think to a weakening of the role of the Environmental Commissioner if he wants to have the support of the Legislative Assembly in what he or she may do.

It was made clear yesterday in the subcommittee by Mr Lessard that he'd been given his marching orders by the Ministry of Environment officials, or by the minister's officials, I'm not sure which, to come into the committee and make certain that this commissioner was going to be chosen by the committee as a whole and therefore give the government complete control over who shall or shall not be that Environmental Commissioner. I think it's wrong. I think it's going to lead to a bit of a farce over the process, because it appears now that the government has already made its choice as to who this person must be or might be. Therefore, I think we're getting away from the whole idea that these are people who are going to act independently of the government and perhaps tainting the whole office before we even begin.

**Mr Elston:** I agree that we should have a consensus around the choice of people to be interviewed and ultimately a consensus among the three parties of the person to be appointed to the position. Once the government chose to have this person, through its legislation, an officer of the Legislative Assembly, it seems to me that all three caucuses must therefore be in agreement with the selection and the manner in which it's done.

It's obvious to me what's happening here. Mr Lessard was very forthright yesterday, indicating that he was unable to change his position, upon direction from others, that he had been advised he must have the committee as a whole to make the choice. It's obvious, the reason for that. There are six government members voting; there is a maximum of five opposition people voting. If there is a split and the government wants a particular person, it can have its way in full committee. It doesn't require any kind of consensus on their part. From that point of view, as Mr Sterling has just said, it makes the whole process of saying that this is an officer of the Legislative Assembly a farce to say the least.

1020

I'm concerned that the government has chosen to make this person a person who is responsible to the Legislative Assembly if it didn't have the intention of allowing the Legislative Assembly the greatest leeway in making the choice. I'm also concerned with reports which have come to us indirectly, stating that the individual who is to become the Environmental Commissioner has already been interviewed and has been chosen by the government and is now just awaiting the answer to the process which will act, if the majority in this case has its way, as a rubber stamp to the Ministry of Environment's choice.

*Interjection.*

**Mr Elston:** Well, you don't have applications, Mr Hope, and that is the whole problem, that the Ministry of Environment has already chosen the people. The Ministry of Environment has already chosen its short list. They have already selected the person on whom they have placed their stamp of approval, and they're now asking the members of the committee, through the government majority, to rubber-stamp their choice. The Ministry of

Environment is not part of the Legislative Assembly; it is part of the government administration.

My view in that regard is that for us then to go out and advertise is a waste of money. It's time consuming. It's going to be nothing more than a front for a charade. I don't understand why you would even come here and ask us to do that if in fact you have confidence in the quality and calibre of the individual who has already been pre-selected by the Ministry of Environment.

If that person is really good, if that person is really beyond partisanship—I won't say "non-partisan" because there are people who have political allegiances who can rise above those and become perfectly good public servants; I understand that—if that person were really good and you were confident in them, then perhaps you would be able to convince the members of the Liberal Party and the Conservative Party who form part of the subcommittee in doing the review that this person had merit and was able to carry out the tasks which the commissioner is going to be engaged in.

I don't understand why you want to play this power politics on the first day we are back in 1994. I don't understand why you want to play this power political game with respect to the Environmental Commissioner's position when you are asking the public to believe that you have the broadest public interest in mind by appointing this person.

At the end of the day, this person is going to be noted for being a partisan, for being a person who is carrying out the will of the New Democratic Party, if no one else, and for being tainted by a process that is being manipulated by the large government membership on the committee. Why are you doing it if this person is so good? Why don't you have enough faith in the integrity and the characteristics of the individual you're putting forward to allow a small group and a consensus to form among that group to recommend the person's appointment? That's what's in the back of my mind as we go through this power play that has been pushed on our friend from Windsor-Sandwich. It's not his character to do this, but he is none the less carrying out the orders he has received from above.

From my point of view, Mr Chairman, there is not a good reason for changing from the subcommittee's report. However, I speculate that you will find there will be at the moment, if the vote were to be taken, a 6 to 4 win by the government members, and I speculate that same six will ultimately choose the Environmental Commissioner.

**Mr David Tilson (Dufferin-Peel):** Any bets?

**Mr Wiseman:** I'd like to make a few comments and I'm particularly disturbed by the tone of the opposition on this.

I have been involved with the Environmental Bill of Rights for a long time. It is one of those bills that I have pushed and have supported and have talked about, and it's one of those bills that in my riding and with my constituents at any rate, there is a great deal of interest and a great deal of concern. I believe my constituents would want their elected representative to the Legislative Assembly to participate in all processes around this bill,



given the degree of significance that it holds for my community. I therefore do not want to be excluded from the process of choosing who the Environmental Commissioner is going to be.

**Mr Elston:** You're already too late.

**Mr Pat Hayes (Essex-Kent):** He's had his turn, Mr Chair.

**Mr Wiseman:** I would also like to point out that the amount of time that was spent on the Environmental Bill of Rights in the other committee that reviewed it before Christmas—at every subcommittee turn of that committee, we were met with hostility, with delay.

**Mr Elston:** That is not true.

**Mr Wiseman:** We spent an hour and three quarters discussing whether or not we were going to hear from the Minister of the Environment people on a silly debate about what was on the subcommittee.

**Mr Elston:** Mr Chair, that is just not true, what he is saying.

**Mr Wiseman:** If you're talking about power plays within the committee and about the numbers, the opposition holds the balance of power in the subcommittee, and my experience leaves me with no confidence whatsoever that there is goodwill on the part of the Liberals and the Tories to move forward with the Environmental Bill of Rights and that the Environmental Commissioner, who is pivotal to the implementation of the Environmental Bill of Rights, would be—I wouldn't see any kind of different action than what I saw in the previous committee. Therefore, my own position, as the member for Durham West in the Legislative Assembly, will not be—

**Mr Elston:** As a New Democrat; that's your position.

**Mr Wiseman:** As an environmentalist and as somebody who has a good track record in worrying about the environment and implementing environmental change—

**Mr Elston:** Worry? Your only worry is how you're going stand up to your constituents who are losing the battle of the dump. That's your only worry.

**The Chair:** Order.

**Mr Wiseman:** I have no confidence in the majority on the subcommittee, and therefore I would not want to see anything less than the full committee involved with the process of picking the Environmental Commissioner.

**Mr Randy R. Hope (Chatham-Kent):** Just a couple of comments made first as to the committee and the subcommittee: There was indication made about the number size of the committee that sits here. It must be indicated also that in the subcommittee it is the opposition that rules the subcommittee where there is only one government member.

The concerns I have, in expressing my viewpoint: I've heard about prejudgment that's already been given about individuals who have already received the job. I look at this from a perspective that I believe, as a committee member, in looking at all candidates who have made application to the job. I believe in doing an interview process as a whole committee, because there were some of us in parts of this province who were very concerned about the environment and wanted to see progress and

rights of individuals being upheld. I use the reference of the individuals who are downstream from the St Clair River who have been contaminated for years with their water and everything else, who would like to make sure that their member, who has been very strong, both when the Liberals were putting—and Murray, I know you're ready to make some concerns—

**Mr Elston:** Why did you vote for 143?

**Mr Hope:** —but let's look at what all has happened through the process when the Liberals were in and trying to deal with the problem that is faced by my constituents today.

1030

All I'm saying is that I believe that as a committee we should have an opportunity—more than three—to participate in a process that conducts interviews and also have all candidates, all applications, and then make a recommendation to the Legislature. I believe that the more members we have participating, especially in this committee, the members of this committee participating, in that process allows us an opportunity to address a number of concerns that are faced throughout this province.

I know I went through the interview process, looking at applications. I would be looking at an individual who has certain qualifications in an area that I believe is of particular interest for the people I represent, agriculture being one, downstream from the St Clair River being another. Those are issues where my constituents are asking, if there's a commissioner to be appointed, then those concerns that they've had for a number of years and by previous governments must be addressed.

I don't support the report that is being put forward today as it appears in number 5, and I believe the committee here ought to be a part of that process.

**Mr Hayes:** The two previous speakers touched on most of the things we talked about. I know the opposition continually talks about the government side having the majority on the committee, but as Mr Hope and Mr Wiseman had indicated, on the subcommittee that is weighted in the other direction. Especially on an important position such as the Environmental Commissioner, I feel as a member of this committee that I certainly want to be able to see all the applicants. I certainly feel that on this important issue I should have a right, as a member of this committee, to make that decision. There are two members from the opposition who I don't feel should be making the decision for me or the rest of the members on this committee, and if I don't have the input, I really feel that my rights are being violated as a member of this committee. I do not support number 5 on this list.

**Mr Paul Wessinger (Simcoe Centre):** I'd just like to add the aspect that where you're appointing a member who is going to have a very public role such as, for instance, the auditor or Environmental Commissioner, I think it's very important to have a broader selection process and more people involved in the selection process.

In the case of the appointment of the auditor, I believe I'm correct that the committee itself did the interview process and the selection; not this committee, I think it



was the public accounts committee that did that. I don't see why this should be treated in any way differently than the situation of the auditor, because this again is as important or maybe even more important with respect to the question of the way the government operates. I think it's very important that everyone has an opportunity to participate.

I would also hope that the committee would come to a consensus with respect to the person to be appointed. I think it's fair to say that I understand from discussion of the selection of the auditor that there was perhaps not a unanimous decision in that aspect, but certainly the unanimity didn't fall along partisan lines. It was, I gather, otherwise.

I think it's also important that we expand the powers of committees in general. I think they should have more role in the legislative process, and for that reason alone I would like to see the committee do it.

**Mr Hayes:** Open government.

**Mr Wessenger:** That's an interesting question, whether we might consider at some stage whether we could move to the situation of, I suppose, some sort of open process with respect to confirmation of appointments or something of that nature. I know it might be a difficulty for our system, but certainly opening the process is, I think, to the advantage of the system. So I would certainly like to see as many members as possible participate in this process.

**Mr Lessard:** I know that we have people we've invited here before this committee with respect to the freedom of information hearings. I hope that we can conclude our discussion expeditiously with respect to this issue.

I'd like to move that recommendation 5 be amended to state:

"That the full committee meet in camera to review the applications received for the position of the Environmental Commissioner and determine a short list of candidates to be interviewed during the week of March 7 to 10, 1994; that the committee request one or two additional days to meet prior to March 7 to decide on the short list; and that the full committee meet to interview in camera the short list of candidates and make a recommendation to the Legislative Assembly."

**The Chair:** Debate? Mr Sterling and Mr Elston.

**Mr Sterling:** I only say to the members of the government that you risk forcing a division in the House on this Environmental Commissioner if in fact what appears to be happening happens. I want to warn you that because of the signals you have sent through the process, it may be the first time when you will have members of the House voting against an appointment.

**Mr Elston:** I wonder why the committee members who have spoken so eloquently about the role of the individual member are not suggesting that the entire Legislative Assembly sit to review all the applications and make the choice in camera. They should. If you hold the logic of the argument by Mr Hayes and Mr Wiseman, Mr Hope, Mr Wessenger and Mr Lessard, it seems that we are making a very difficult situation for the people

who do not sit on our committee.

I'm surprised Mr Lessard didn't say that all the members of the Legislative Assembly will receive all the applications and will be able to sit and go through the entire interview process for all the candidates, because, you see, if they are right that a subcommittee of the Legislative Assembly committee is not entitled to sit in this selection process, because they want to be involved, then so do a whole pile of other of the members, and in fact perhaps—

**Mr Wiseman:** They can come on down.

**Mr Elston:** But they cannot choose in the committee; they cannot choose in the committee because there are only 11 of us who are able to vote on the committee. That means that the Legislative Assembly members who are interested in the environment are being excluded from the process.

**Mr Hope:** They can come on down, though.

**Mr Elston:** It seems to me, Mr Chairman, that these people's logic has persuaded me that this entire process should be put in camera in the Legislative Assembly so that every member can question and ask and then account back to their constituents about the choice of the Environmental Commissioner.

When I suggest that the rights or privileges which these people are asking for themselves be extended to the rest of the Legislative Assembly, they say, "No, that isn't possible." You can see that there are only 11 of us who will participate in the selection process under the motion put by Mr Lessard. For heaven's sake, with the very strong arguments made by all of those New Democrats over there, everybody should be able to vote on the selection of the short list and of the final candidate, not just vote on the recommendation of this committee to the Legislative Assembly. That's how this argument would go, ultimately, if you followed the logic of all those people.

We might very well need to have a referendum. You folks are just so good on these things, including people but having your way, that I'd be prepared to support a motion for a referendum. If you want to move it, I'll support your referendum motion.

Mr Chair, I just wanted to point out the sense that we have that these folks are not looking at expanding participatory democracy in the choice of this at all. They are looking to make sure that the candidate who has already been selected by the Ministry of Environment and Energy will be the person who receives rubber-stamp appointment.

Mr Sterling has already noted the change in the motion that said the Ministry of Environment would pick the short list. That is being reinstituted by the committee, making sure they have the numbers here.

I won't say more about it. I think we should vote on it. I think Mr Sterling's warning is quite appropriate that this is risking a vote in the Legislative Assembly itself with respect to the public role of a person who is not supposed to just represent the New Democrats but is supposed to represent all the members of the Legislature plus all the members of the public. It may very well be a most



difficult position in any event, but it will be much more difficult if there is a split House on the appointment of this individual.

1040

**Mr Tilson:** I have a question to the mover of the amendment, but could I have it read again, please?

**The Chair:** Mr Lessard moves that the report of the subcommittee be amended by striking out point 5 and substituting the following:

"That the full committee meet in camera to review the applications received for the position of Environmental Commissioner and determine a short list of candidates to be interviewed March 7 to 10, 1994;

"That the committee request one or two additional days to meet, from the House leaders, prior to March 7 to develop the short list;

"That the full committee meet to interview in camera the short list of candidates;

"That the committee make a recommendation to the Legislative Assembly."

**Mr Tilson:** Thank you. I have a question to the mover. My understanding is that the government members of the standing committee on government agencies have informed that committee that they would be approving this appointment, or reviewing the appointment. Perhaps you can tell me what coordination the government is setting up with the agencies committee as to the approval of this appointment.

**Mr Lessard:** I can't answer that question.

**Mr Tilson:** I guess that's the point I'm trying to make, that I believe there is a plan. That person already has been chosen, presumably by the Minister of Environment, that we're going through a complete farce and that the farce will continue through the agencies committee. It's regrettable that the so-called open process that was promised by this government is not an open process, and so much for employment equity.

**Mr Sterling:** I'd like to ask the clerk how much it's going to cost us to advertise for this position.

**Clerk Pro Tem (Ms Tannis Manikel):** I haven't been able to talk to the director of human resources this morning, and so I didn't get a figure from her on what it would cost to advertise within Ontario, as the subcommittee had discussed yesterday. I'm guessing from other ads that committees normally run that it would be about \$15,000.

**Mr Sterling:** I think the government should come clean and save the taxpayer at least \$15,000.

**Mr Tilson:** Just tell us the name.

**Mr Sterling:** Just tell us the name and let's forget about advertising.

**Mr Wiseman:** I haven't got a clue.

**Mr Tilson:** Oh, come on. You know who it is.

**Mr Sterling:** This is a joke. We're going to waste the time of the committee and we're going to waste taxpayers' money by advertising for a position that's already been filled.

**Mr Elston:** There goes the dedication of the constitu-

ents already, Jim.

**Mr Tilson:** Ask your staff who they've appointed.

**The Chair:** Does anybody want the amendment read again before we have a vote on it?

**Mr Tilson:** We've all heard it enough.

Mr Chairman, I would request a recorded vote on this motion, please.

**The Chair:** All those in favour of Mr Lessard's amendment to number 5?

**Ayes**

Cooper, Hayes, Hope, Lessard, Wessinger, Wiseman.

**The Chair:** All those opposed?

**Nays**

Elston, McClelland, Morin, Sterling, Tilson.

**The Chair:** The ayes are 6 and the nays are 5. I declare the motion carried.

Shall Mr Elston's report on the subcommittee report, as amended, carry?

*Interjection.*

**The Chair:** This is the second part.

**Mr Hope:** You said something about Mr Elston—

**Mr Elston:** I moved it.

**The Chair:** He moved it originally.

All those in favour? There are 6. All those opposed? There are 5.

**Mr Elston:** Mr Chair, can you advise if it is a recorded vote? If it is not a recorded vote, can you can tell us the result of the voting numbers?

**The Chair:** The result was 6 for and 5 against.

**Mr Elston:** Is it true that Mr Cooper, Mr Lessard, Mr Wessinger, Mr Hope, Mr Hayes and the member for Durham West, Mr Wiseman, voted in favour, and that Mr Sterling, Mr Tilson, Mr Elston, Mr Morin and Mr McClelland voted against?

**The Chair:** I counted hands.

**Mr Elston:** Is it true that those were the hands you counted for and against?

**Mr Hope:** No, he counted everybody's hands.

**The Chair:** I just counted hands.

**Mr Elston:** I noticed that you nod in approval with the names that I've listed for the record.

**The Chair:** I didn't take fingerprints.

**Mr Elston:** Did you notice anyone on this side, on your left side, who voted in favour of the motion, Mr Chair?

**The Chair:** To my left or my right, yes. I guess that covers it.

**Mr Elston:** I have a question, Mr Chair. We had a circulation of materials prior to the committee and one of those items was from the Atikokan Board of Education. My copy didn't turn out real well and I suspect it's because the one that came to the clerk is not real good. Is there a chance it could be a little bit better? There are parts of these paragraphs that are not readable.

**The Chair:** We'll try to see if we can get a clearer copy, Mr Elston.

MUNICIPAL FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY ACT  
LOI SUR L'ACCÈS À L'INFORMATION MUNICIPALE  
ET LA PROTECTION DE LA VIE PRIVÉE  
INFORMATION AND PRIVACY  
COMMISSIONER/ONTARIO

**The Chair:** I'd like to call forward Mr Tom Wright, the commissioner. Welcome to the committee. Sorry for the delay. We had two hours here from 10 till 12 o'clock. I see that you've left us a fair amount of information and quite a few recommendations, so it's either how fast you can talk or how much you can condense it in a short period of time. Welcome. You may begin.

**Mr Sterling:** Before you start, could I ask the freedom of information commissioner what you thought of the Legislative Assembly's process in picking the freedom of information commissioner?

**The Chair:** I don't think that's relevant to his presentation, Mr Sterling.

**Mr Elston:** I think he might be fairly positive on it.

**The Chair:** Carry on, Mr Wright.

**Mr Tom Wright:** Thank you. I'm pleased to have the opportunity to participate in the committee's three-year review of the Municipal Freedom of Information and Protection of Privacy Act. We feel the review process will help ensure that Ontario's access and privacy legislation keeps pace with a rapidly changing environment.

In many ways that is the core message which I would like to leave with the committee, and that is a matter of looking at the act, both the municipal and provincial acts, for purposes of having it keep pace with the changes that have taken place, both since the implementation of the provincial legislation in 1988, as well as the introduction of the municipal act in 1991. Our remarks, although they are specifically directed mainly at the municipal legislation, do have application to the provincial Freedom of Information and Protection of Privacy Act.

1050

Mr Chair, you've made mention of the resource materials that we've provided, which we hope will be of assistance to the committee. In addition to the submission that we have made, there will be a copy of my remarks that I'm about to embark upon, and the two binders contain further background information on various issues. What they do largely is an attempt to distil six years of experience with the legislation. They reflect a large amount of work on the part of the staff of our office and I would like to take this opportunity to publicly thank them for putting them together within a very short time frame.

I notice that the membership of the committee has changed quite a great deal since the first review was done, so I thought I'd take a moment to provide a brief overview of what we do at the information and privacy commission. Through the course of my remarks, I'll call that the IPC which is the acronym for the Information and Privacy Commissioner.

In many ways, Ontario moved to the forefront when it combined access and privacy in a single piece of legisla-

tion, with a single agency reviewing government decisions regarding access to information and government practices concerning protection of privacy. The independent review function is performed by the IPC. As has already been referred to in a slightly different context this morning, the Information and Privacy Commissioner is appointed by and accountable to the Legislative Assembly, not the government of the day, and the commissioner is an officer of the Legislative Assembly. I was appointed in April 1991, again, as mentioned, on the recommendation of an all-party committee following an open, competitive selection process.

We have four roles to play in connection with the legislation: We resolve appeals from the refusal of government organizations to grant access to information; we investigate privacy complaints involving government-held personal information; we educate the public about the access and privacy laws; and, lastly, we conduct research on access and privacy issues and offer advice and comment on proposed government legislation and programs. Fundamentally, what we do is promote the concepts and principles of open government and the protection of personal privacy that underpin the acts.

Again, the message I would like to leave with the committee today is that government is the custodian, not the owner of the information it possesses. The true owner of government information is the public. The overriding objective of freedom of information legislation is to translate this principle into everyday practice by fundamentally altering government attitudes.

The ultimate goal is to modify the culture of government organizations, to foster a spirit of openness and a willingness to share information with the public. We are working towards the day when government organizations provide easy access to the non-personal information under their control, not just as a reaction to formal requests but as an ongoing mode of operation.

Today, access to government information is critical if public institutions are to be held accountable for their actions. Access to information can help restore the balance between government, with its vast array of information resources, and the individual citizen.

The second part of the mandate deals with privacy, another cardinal value. In an age when data move at the speed of an electron, we treasure more than ever the right of individuals to determine when, how and if information about themselves is to be communicated to others. I think again, in terms of sharing with the committee what is going on as far as privacy issues are concerned, they're rapidly moving up the scale of importance on the public agenda.

Just over a year ago, business and government organizations sponsored a nation-wide privacy survey and the study found that nine out of 10 Canadians were at least moderately concerned with their privacy, with 52% indicating that they were extremely concerned. Interestingly enough, this latter figure was comparable to the 52% who were extremely concerned about the environment and the 56% who were extremely concerned about unemployment. The researchers concluded that Canadians believe their personal privacy is under siege and that they



want something done about it.

The municipal legislation, as you know, has been in force for three years and the provincial act for six, and during this period we have had an opportunity to closely observe the use, application and operation of these statutes.

I'd like to provide some indication to you of how we feel the laws are working, and I'd like to talk about a few, and I emphasize "a few," statistics.

We don't have the request figures for 1993 as yet, but we do know that from 1988 through 1992, provincial organizations received 35,500 formal requests for personal or general information, and in 1991 and 1992, municipal organizations received a total of 11,200 formal requests, for a combined total of almost 47,000 requests under the acts.

I think if you were to speculate as to what the figures will show for 1993, even using 1992 statistics, we're looking at in excess of 60,000 requests that will have been made under these acts since the first act came into effect in 1988.

In each year, in more than half of all requests, in terms of how they were responded to, the requester obtained all the information sought, and more than three quarters of all requests were acted upon within 30 days.

In terms of 1993 figures, we do have figures relating to the appeals process, a process, of course, which is administered by our office. Over the past six years, more than 3,100 appeals have been filed under the provincial act, and in the past three years, almost 1,500 appeals have been lodged under the municipal act; again, a total of just over 4,600 appeals received by our office since 1988.

During that time, we have resolved almost 2,900 under the provincial act and more than 1,200 under the municipal act, for a total of over 4,100 completed appeals in that time frame.

I'd also like to mention that both pieces of legislation specifically talk about how our office should go about resolving appeals. There's a very direct focus on use of mediation in order to resolve appeals, and it's something we have taken to heart in terms of how we go about our business. In fact, a large majority of appeals are resolved by way of mediation, working out this satisfactory resolution or arrangement between the appellant and the government organization. In fact, since 1988, over 70% of all the appeal files we closed were closed through the mediation process.

But the act also goes on and provides for what happens when mediation hasn't worked. It gives the commission an order-making power, an ability to require that either the decision is upheld or not upheld. We've issued, under the provincial act, over 600 orders, and 240 orders in municipal appeals, again for a total of around 850 orders since 1988.

The other part of our mandate that we talk about is privacy. In carrying out that mandate, we conduct privacy investigations. There have been about 600 done, again since 1988, close to 360 involving provincial organizations and over 230 involving municipal ones.

I'd also like to mention, in terms of our own processes

under the act, that we have taken great strides over the past two years to streamline the processes that we follow, and as a result, appeals closed and investigations completed in 1993 were more than double the totals recorded in 1991.

I mentioned one of the other parts of our mandate, which is public education. We have a province-wide outreach program which we feel does assist in increasing the awareness of the acts among both public and government organizations.

For example, in 1993 alone, my staff and I completed more than 60 speaking engagements and gave 30 media interviews. For a number of years, working with provincial and municipal partners, we have organized a fall workshop for information and privacy coordinators. Our office produces three publications to keep the key players in the access and privacy system informed: a newsletter, a quarterly summary of orders and investigations, and guides on practices and procedures.

#### 1100

By way of a conclusion in terms of where we stand today, I think the record over the past six years leads us to conclude that access and privacy are becoming a standard part of daily business for government organizations in Ontario. There is a solid sense of responsiveness to access requests and a heightened sensitivity to individual privacy.

Having said this, we do feel that there are major opportunities to further advance the objectives and principles of the legislation and to make the system more workable and understandable for all concerned. We are therefore proposing a series of amendments to one or both of the acts for the committee's consideration. As you know, you have the submission that we provided to you today.

We hope that the committee's review, after it's heard the various presenters, will result in legislative changes which will accomplish four specific goals: (1) expanded access to government records; (2) stronger privacy protection; (3) improved customer service; (4) clearer powers and improved processes for the IPC.

I would like to take a moment to highlight just a few of the 53 amendments. I assure you I will not be going through them item by item, even if you had the time. I'd like to talk along the lines of the objectives that I just described, and initially I'll refer to amendments intended to both expand access and strengthen data protection.

The first proposal, and it's a major proposal and it's one, I believe, that your subcommittee considered earlier this morning, is that we feel the legislation should extend to a wider range of public organizations, specifically, hospitals, universities, social service agencies and professional governing bodies. All of these organizations perform important public functions and many of them receive substantial government funding. It is in the public interest, I submit, to make them more readily accountable. At the same time, these bodies often hold sensitive, personal information which requires legislated privacy safeguards.

In addition, we've included proposals which we feel



meet the access and privacy challenges of the electronic age.

**Mr Sterling:** Could we ask questions as you go through these proposals, just brief questions at this time rather than going back?

**The Chair:** Just a clarification?

**Mr Wright:** If I could, I would ask that I be permitted to finish the remarks, if that's all right.

**Mr Sterling:** Okay, go ahead.

**Mr Wright:** In terms of the electronic age, which I was referring to, I think that is one of the big differences we have today from what the situation was when the committee last looked at the provincial legislation. We have moved much further into the electronic age. As a result, some of the recommendations that we're putting forward are a little more specific in terms of their direction and how they focus on these changes.

What we're proposing is that access and privacy concepts be built into emerging systems as they are being designed, that as these electronic information systems are being created, thought be given at the outset to what the implications are for public access to electronic records, as well as the privacy considerations.

I understand from the people who know far more than I about these kinds of issues that it's much easier to build something into a system or a program, the software that runs these kinds of systems, before than it is to go back in and do a lot of reprogramming. We certainly have seen examples, particularly in the US, where thought has not been given to the access and privacy considerations, and the implications are and can be quite significant in terms of the requesters as well as for personal information.

One area particularly that comes to mind is the impact it could have on fees if proper provision is not made for access to electronic records. The cost can be—and it's strange for me to be saying this. I would think sort of almost by definition that if information was recorded electronically, it should be cheaper, that it should be easier to get. If these kinds of things aren't built into the systems initially, you have situations such as existed in Florida, where records that were readily available and easily available in paper format at very little expense—because the electronic system had not been created with access in mind, the newspaper that was asking for the same information was quoted a fee of \$350,000 in order to get information that was previously easily available in paper format.

In that context, as I say, it's almost against the grain to think that if it's electronic, it would cost more. One would think, by assumption, it would indeed be easier, and this is what we're proposing that government organizations be required to do: to give thought to these issues.

The other cluster of proposals in which we focus on wider access includes the disclosure of the actual salaries, not merely salary ranges, of all government employees, and I stress the word "all" government employees.

We are also urging the provision of records in alternative formats to overcome barriers facing visually impaired and hearing-impaired persons.

We are recommending that the disclosure exemption for cabinet records be reduced to 15 from 20 years. The exemption for advice to municipal government, records of closed council meetings and draft bylaws should also be reduced to 15 years.

Very importantly, we are proposing what we feel is a more effective and in some ways stronger public interest override clause. There is a clause in the present act, but it has proven hard to apply; in fact, so hard that it has never been used in an order that's been issued by our office. We feel the revised wording would permit increased access to government records which would otherwise be exempt from disclosure where there is an overriding public interest.

The other new development which has arisen over the past three years deals with the distribution of government information through the private sector. We're calling for safeguards to ensure that when the private sector distributes information on behalf of a government organization, the public access to the information will not be impaired; that is, data users should not have to pay fees greater than those under the usual access system in order to obtain basic government information.

1110

Turning just for a moment to the area of privacy protection, we have what I would describe as a major concern with respect to the ability of government organizations to designate records containing personal information as public records. We feel this should be permitted only if authorized by statute.

The situation, as it's turned out today, is that the government can classify records as publicly available—and I'm talking about records containing personal information, information about me or individuals—by way of policy decision as well as by statute. The important point in terms of the ability to do this is that as the personal information which is contained in public records is exempt from privacy protection requirements, we therefore feel that the current practice allows just a bit too much discretion in terms of the designation of public records. We also feel that there should be a specific provision dealing with the security of personal information that is held by government organizations.

I mentioned a third goal of the review, and that is customer service. As I'm sure you may be aware, there was a customer service task force in 1992 which basically looked at the attitudes of the public towards the kind of government service they were receiving for their tax dollars. It's fair to say once again that customer service has become a key priority. In that light, we're offering an array of changes to the acts which we feel will make them more understandable, firstly, and more workable for the public, resulting in better customer service.

Just as a flavour of these kinds of recommendations, they range from restructuring of the section of the act on the non-disclosure of personal information held by government to the introduction of incentives to encourage government organizations to comply with the time limits for responding to an access request.

Our final priority which I'll refer to is the ability for



our office, the IPC, to do our job better. One difficulty we face is that a number of the functions we must perform to meet our responsibilities are implied rather than spelled out in the acts. We recommend amendments to expressly give the IPC the power to review a number of matters: review access procedures of a government organization outside the context of an appeal; review records of personal information held by government organizations; and to investigate an act or practice of an organization that may breach a privacy principle under the law.

What it has meant for us in terms of the, at times, uncertainty that exists with respect to these powers is that we've had to rely on the goodwill of government organizations to carry out some of the functions with which our office is entrusted. I should add that this goodwill has largely been forthcoming, which I think again shows what I mentioned earlier about the willingness to comply with the purposes, both access and privacy, of the legislation.

However, clarifying and in fact including in the law the fact that these powers exist I think will make everyone's job a little more straightforward. It does not represent in any fashion a desire on the part of the IPC, and I'd like to stress this, for more power. We're simply reflecting changes that relate to work that we already do and have been doing since 1988.

In deference to the time constraints the committee is under this morning, I'll touch on three other points. They relate to the function that we perform as a matter of policy. They don't directly relate to the review that the committee itself is undertaking but I do feel they can give you a bit of a flavour for the context in which access and privacy is developing, not only in Ontario but in Canada and in fact across the world.

One of the things we have dealt with recently is that in November 1993 we released a report on workplace privacy. The report was called *Workplace Privacy: A Need for a Safety-Net*, and contained a number of recommendations. They related to practices in the workplace such as electronic monitoring of employees, testing of employees—genetic testing, drug testing, this kind of testing—as well as the misuse of employment records in the context of the workplace. Basically, we're asking that there be some ground rules around workplace privacy: the rights of the individual and also a recognition that there's no question that the employer has rights in the context of the workplace.

There are two other issues which I will mention, and I will be very brief. One concerns health care information. Our office has for some time been calling for comprehensive health care information. We made this comment at the submission to the committee in 1991 and I simply would repeat the comment. It's referred to in this submission. The Ministry of Health has in fact been working for some time on developing access and privacy legislation; in fact, it's gone as far as to release a paper of principles for draft legislation in late 1991. However, we understand that all work has stopped on that. We feel it's one of those issues where you're dealing with the most sensitive type of personal information imaginable

and simply would ask the committee to encourage the development of this kind of legislation.

Another thing I think the committee should be aware of in the area of privacy is the developments that are taking place both internationally and within Canada. Internationally we have an EC directive: The European Community is dealing with controls around personal data. Clearly, it applies only to the countries that form the community, but the directive talks about the ability to disclose information to countries which do not have adequate privacy protection.

The main feature that would cause concern in terms of the Ontario situation is the fact that the legislation internationally covers both public and private sectors, whereas in Ontario and federally we have privacy legislation that affects only government organizations. Of course, the big question that raises is what effect, if any—and I'm not in a position to speculate on it—will this directive have in terms of the ability of not only Canada as a country but also the province of Ontario to do business with EC countries?

The other example we have is right next door. The province of Quebec, on January 1 of this year in the form of Bill 68, now has privacy legislation, data protection legislation which covers the private sector. Obviously, our office is watching with great interest how this works, but it's a move that is a first in North America. I think we will be able to learn from the experience of Quebec, and we have urged, and will continue to do so, that Ontario move in the same direction.

In terms of a broader issue, which again is along the lines of making the legislation work better, we have been working with Management Board secretariat to develop what I would describe as practical guidelines around the routine disclosure or active dissemination of government records.

The reason we're doing this kind of project is simply because of the reality of today's fiscal environment. I would be the first to admit that a system that requires formal requests, requires appeals, can require ultimately going to court, is not necessarily the most effective way to achieve the ends of the legislation. We are looking for alternatives to promote so that this whole notion of government as the custodian, not the owner of information it holds, really sinks in. In fact, the ultimate goal would be that we no longer require freedom of information legislation because what the first reflex of people who receive requests for information indeed becomes disclosure and not secretiveness.

As I mentioned, what you have before you is our effort to translate what we have learned over the past six years into what we feel are practical, commonsense changes to further the purposes of the act. I would ask the committee to evaluate our recommendations carefully in light of your own perceptions and the input you will receive from other groups and individuals during the course of your hearings. We hope that members of the committee share our convictions on access and privacy, and we are certainly prepared to assist with your deliberations in any way we can. Thank you very much.



**Mr Elston:** Thanks very much, Tom. It's interesting to see the number of applications in the municipal sector. I suspect that probably that will be the area in which you grow most steadily over the next few years, that the potential is probably bigger there.

I raised a question yesterday about disclosure of the salaries, per diems, what ultimately amounts to the full pay available to reeves and council members, because I understand in some places they are not allowing that information out. Your recommendation for the salaries of all provincial fields to be made available would extend as well to all municipal councils and school boards? It applies to everybody right throughout the province?

**Mr Wright:** Yes, it would be a general requirement. Our proposal contains no exceptions.

**Mr Elston:** Is there a jurisdiction somewhere now that allows that information to go out?

**Mr Wright:** Yes, British Columbia. The legislation came into effect on October 1, 1993. It provides for full salary disclosure. Saskatchewan has the same requirement. Alberta is presently considering access and privacy legislation, but I don't recall whether they have it or not. Quebec has a model whereby salaries above a certain level, I believe \$50,000, are required to be disclosed, and a salary range below. I think it's fair to say that the experience in other jurisdictions, both BC and Saskatchewan, as I mentioned, would indicate that there are others who are doing something along the lines of what we are recommending.

**Mr Elston:** And that would extend to corporations like Ontario Hydro or the Stadium Corp or any of those organizations as well.

**Mr Wright:** Whatever organization is covered by the legislation, that kind of requirement would exist, yes.

**Mr Elston:** Another question with respect to your experience so far: Have you found, as was suggested originally when we put the municipal information act together, that there is any difficulty for the small municipalities to meet requirements? Some said this would be too expensive an ordeal to undertake, to organize, to make effective. Have you found any problem areas in relation to implementation?

**Mr Wright:** I think, as with any other new type of legislation, there are growing pains. We've had a number of situations, particularly with the small municipalities that aren't equipped to deal with, say, a high-volume requester, where an appeal, for example, has come to our office, and our approach is to try to make it work for all concerned. We've been able to effect solutions, once again, in terms of allowing the municipality to carry on its fundamental business as well as to comply with the requirements of a requester who is seeking to exercise rights under legislation. I think that, by and large, through the combination of efforts and also the goodwill of the organization receiving the request, those problems which may have existed initially have been overcome. I'm sure some experience problems, but I don't think it's a general comment. I find that most are able to deal with it.

I would add, Mr Elston, that in some ways some of the smaller municipalities in particular are perhaps more

familiar with the idea of giving out information. They did so before the act, and in many ways they are continuing those kinds of practices, so in a sense they are able to deal with it.

**Mr Elston:** I raised yesterday the issue as well about the access by parents to their offspring's school performance records. I would even go to attendance and other things. Have you got a commonsense approach? I'm the father of a 16½-year-old who is now in secondary school. Technically, I understand that my inquiries about her performance at school, or even her attendance, might be embargoed by her if she chose to tell the school not to release that information. I'm interested in her future and not interested in giving her difficulties, but how does a parent actually get to know what is going on at the school with their offspring if they are embargoed from getting access to the school performance records?

**Mr Wright:** I share your concern; I also have two children. But I don't see the act providing—

**Mr Elston:** It has been used. It has been brought to my attention by others, and that is my concern.

**Mr Wright:** That's fair, and I share your concern. I have two children who are also in school and I am interested in how they're doing. But I think the act in many ways does permit the kind of disclosure you're talking about; granted, within limitations. For example, the act talks about the age of 16 in terms of a sort of cutoff date, whereas the Education Act talks about the age of 18. There has certainly been a lot of discussion about this disparity and which rules, but in terms of what I understand are described as Ontario school records, certainly there is a right of access by the parent, under the Education Act, up to the age of 18. The way the access to information legislation works, if that kind of access is permitted in another statute, then it's not prohibited by the access to information legislation.

Once you reach age 18, you're correct. I think this is an issue that transcends the access to information legislation and becomes a societal issue. At age 18, you have the right to vote. You're really talking about people who in many ways are seen by society in general as adults. Yes, you're right, at that point there is the potential that the rights given to the individual, when that person is now seen as an independent individual in many ways, come into conflict with what are seen as parental rights.

I don't think the access to information legislation can really address that larger issue. At the same time, within confines, I think it can be made as workable as possible. This concern, although by no means has it disappeared, I think has lessened. Management Board issued a directive, a bit of guidance on the Education Act and the Municipal Freedom of Information and Protection of Privacy Act, which I think went some way to clarifying some of these initial concerns. How it's actually put into effect in an individual school or school board is another area of concern, but I think it can be addressed in practical ways.

**Mr Elston:** Just two more quick questions to highlight concerns where information on us can get out: first, maybe your comments on public officials' use of cellular phones or car phones, which I understand are now



probably the biggest problem for security of personal information. Let's say a physician was talking about a patient from his or her car, or a deputy minister was talking about a file from his or her car. Those are, almost as a rule now, subject to be monitored by somebody at some point. Basically, it's air wave monitoring or mining, or however you might describe it, for information purposes.

Is there anything in your recommendations that would cover the requirement for guideline implementation for use of transmitted information? Ought we to think about making our public institutions more secure with the use of those? What are your thoughts on that?

**Mr Wright:** The first answer I would give you is no, there is nothing in the recommendations specifically addressed to that.

The point you make, though, is a very good one, one that's consistent with all types of new technology. In many ways, the understanding of what the technology means simply isn't there. For example, I don't think a lot of people understand that when you're using a cellular phone you're broadcasting, which of course is quite different from the dedicated line approach with telephones that perhaps we're all familiar with. What it requires is a change in what you do by using cellular phones.

Very early on, shortly after the commission came into existence, as a result of an experience an organization had in using fax to transmit confidential information, our office prepared fax guidelines which were designed to alert the institution to the issues around what happens when you dial the wrong number on a fax and confidential personal information which could be very sensitive goes to the wrong place. The unfortunate thing is that you can't get it back. You can sit there and say, "Oh, my gosh," but it's gone.

Janet Gore is our senior policy adviser. I am going to ask her a question, if I may, in order to further respond.

1130

Janet has just very kindly pointed out to me the fact that the federal government has produced a set of telecommunication privacy principles. Obviously, the broadcasting issue falls under the federal jurisdiction, so steps have been taken at the federal level. There has also been talk about the prohibition of scanners and things like this as another means of dealing with this kind of situation, which, practically speaking, may not have the effect you're really looking for.

**Mr Elston:** The technology issue goes to the second part of my question, and I think you've talked about it a bit: the security of computer and other data banks in both the municipal and provincial fields; technically, under our review here, I guess the municipal field.

The danger of the hacker, an individual who's having fun breaking into and accessing information in public directories and that sort of stuff, I think is known to individuals. What, if anything, are we to require of data bank caretakers, if we can describe them as that, under municipal freedom of information?

**Mr Wright:** We talk about that very issue in a couple

of recommendations. I did mention in my remarks the idea of requiring that there be a specific provision as far as maintaining security of personal information is concerned. In my view, that would extend to information that's maintained in an electronic record format.

The other thing we have talked about is the introduction of a regulation-making power which would set standards for electronic information systems. These kinds of concerns, which I think are very valid, could be built into the legislation through the use of regulation-making power, which I think in that sense is a more effective way of dealing with it in that it allows the flexibility to try to keep up, to some degree, with everything that happens so quickly when you talk about electronic information.

**The Chair:** The Conservatives are next.

**Mr Tilson:** How much time do we have?

**The Chair:** Thirteen minutes; that's for each party.

**Mr Tilson:** Okay. I have a couple of questions, then Mr Sterling has some.

I appreciate the work you've been doing. It seems you've appeared at a number of committees I've sat on, health cards and the other committees you've come before. Certainly the work you're doing is expanding. My question is with respect to the commissioner's office itself. I'm sure your office has expanded substantially since you first started, just to do all these things you're doing. With the recommendations you're proposing, have you any estimate about costs specifically for your office, in terms of size of staff or contracting out to assist you with all these various and certainly very worthwhile things you're doing? You've listed the four points, and I appreciate that.

**Mr Wright:** If you're talking about expansion, the only area in which we're really making any change at all from where we are today would be the broader coverage of the legislation, and we have not gone through the cost implications of what that would mean for our office. But I think something that has happened over the years of the office is that we have learned to do our business better and have built in these kinds of efficiencies. Although I think I would be inaccurate to say it doesn't have cost implications, I don't see them as being significant enough that they would prevent a step from being taken.

**Mr Tilson:** I look forward to reading the materials you've given to us. One topic I've had concern about is that this government and perhaps other governments, whether municipal or others, have developed this word "partnership" in terms of, for example, the casino operations. Teranet is another example where contracts are entered into between a government and a private firm or firms, and I suppose the road thing, this new road they're putting in north of Toronto, is another one. I'd like you to elaborate on that issue, because I understand that if you try to receive information about those private firms dealing on those, you can't get it. You've touched on it in your recommendations. If this process continues, the taxpayer simply will not have access to those things, and I've listed only three examples.

**Mr Wright:** I think it's a very accurate comment. In



fact, our office was involved with an appeal—and as this is a matter of public record I have no hesitation in sharing it with the committee—involving Teranet and the various kinds of agreements that were entered into between various groups. This was a matter that caused me great concern and I actually issued the order at the end of the day.

You're quite correct that one of the issues we had to look at is an exemption that deals with commercial information, financial information, of private sector organizations, and there is an exemption in the act that permits this.

At the end of the day, when I made the actual order I did, I included a comment in the order which said that I felt as a matter of general practice that government, or the particular ministry or organization, had to develop a process whereby there was more voluntary sharing of information on these agreements. I suggested that they use the example of Teranet, in terms of the disclosure that took place over time, as a model for what they should be disclosing as a matter of routine. I agree with you: Fundamentally, the public has a need to know when public funds are involved in these kinds of initiatives.

**Mr Tilson:** If I can just stop you there, how far would you go, though? Because if it weren't for the pressure of the media on Teranet, those clauses would never have been seen; they never would have reached the attention of the public. I don't know what the implications are of Highway 407 or whatever the new road is, and the gambling casino is another. I don't know what's being kept secret.

**Mr Wright:** To go back, if I may, the fact we begin with is that there is an access to information act which does permit the request to be made, that sort of gets you in the door, if you will, and gives you the opportunity and right to ask for the information. If the information is not forthcoming, then there is the appeal mechanism available through the commissioner's office.

The other thing I was going to mention is that one of the recommendations we made is a reworking of the public interest override section in the act so that if you have situations such as you describe where it's clearly in the public interest, there is an ability, even if it is commercial information and even if an exemption applies, for the information to go out. In a sense, I think that just rounds out the act and allows it to work. It allows it to work in more situations and allows it to better address the accountability issues which you raise, because I think they are very real.

**Mr Tilson:** One brief question, and then Mr Sterling will have some questions. References to Management Board secretariat seem to pop up periodically; I know it did during the health cards debate. Should this committee, before it reaches its conclusions in deliberations on these pieces of legislation—is it two bills? I don't know whether it's only the municipal or the provincial as well—be talking to representatives from that secretariat? They seem to be getting involved more and more in privacy issues. I'm thinking specifically of the health card issue as one that comes to mind.

**Mr Wright:** Are you speaking about sort of beyond

the freedom of information and privacy branch of Management Board?

**Mr Tilson:** Except that we're talking about privacy matters the secretariat seems to be dealing with.

**Mr Elston:** They were here yesterday. That was Frank White.

**Mr Wright:** That's why I asked the question. I understood that Mr White was here yesterday, and he represents that branch.

**Mr Tilson:** I'm sorry, I didn't know that.

1140

**Mr Sterling:** I just have a few questions. First, you mentioned that we should consider bringing hospitals, universities and social service agencies under the act. In a technical sense, how appropriate is it to bring these agencies under the existing act?

**Mr Wright:** The best answer I can offer to that is that it happens in Quebec and it happens in British Columbia.

**Mr Sterling:** I know it happens. I'm asking, should we be writing a new act? Will it require substantial amendments to this act or can they just say it covers these agencies? Will the language of the act be appropriate to these kinds of institutions?

**Mr Wright:** My impression is that you would not need separate legislation, that in fact what we have in the present acts, depending on municipal or provincial, would permit the addition of these types of organizations to the legislation. I would certainly agree with you that you would need to take a look at whether the exemptions and other considerations that exist address the kinds of concerns these organizations might have. But when I compare, for example, the British Columbia legislation, which is modelled very closely on the Ontario legislation, they were not required to make many changes to permit a comprehensive piece of legislation that extends to the kinds of groups you've just referred to.

**Mr Sterling:** Thank you very much on that one.

I was very interested in your statements on the electronic systems because it's something I'm concerned about and I think should be addressed as the government goes into implementing computer and electronic data protection kinds of things. There's a question I have, and it's a departure from the freedom of information legislation as we know it: Save and except for I guess one section in the act which is a positive duty on the government to disclose, all the rest is reactive. The problem is, what does a government disclose in terms of electronic information? Rather, how does it account to the public? There's no process within our structure that they must come to the Legislature and say, "The Ministry of Transportation is going to implement a new program."

In the United States, because of the different mix in terms of responsibility for budget, financial responsibility, which is shared by the Legislature, the state Senate and the Governor in different pieces but they all have responsibility for it, the state legislatures, particularly in states like Minnesota, have implemented quality or accounting programs so that the state legislators will know whether a program is reaching the target it was intended for. They have implemented different systems of measuring that.



I would suspect, given our parliamentary system, that the nature of government would be to disclose as little as possible. In other words, you set up a program and you want as much flexibility as possible in how you measure whether it is successful or not successful. In fact, during my experience, we have had a number of programs set up for intention A, but intention A sort of falls by the wayside and the people running the program eventually are satisfying another need that is perceived or dreamed up or whatever, and therefore the resource or the money is in effect wasted in terms of meeting what the original intention of the bureaucrats and the politicians might have been at the beginning.

I guess my question is, who sets the parameters for what is disclosed and what isn't, and how it is disclosed? One of the problems is also how the information is presented. I've just returned to Queen's Park after a brief holiday and I'm inundated with information; I've got information coming out my ears. It's not so much that the information is lacking or whatever; it's the organization of that information and how it's presented.

What do you think about putting in legislation the requirement that a government, when it implements a program, or goes about buying new computers, I guess—I'm not sure which—has to come to a committee of the Legislature and say, "This is our program, this is our intent, and this is the way we think we should be measuring whether it is successful or unsuccessful"? You and the Provincial Auditor would sit in on that particular meeting and make recommendations to a legislative committee and say, "Yes, this is fair" or "This is not fair" in terms of how the accounting should be set up and how the reports should come out and their timeliness.

With electronic information able to be collected much faster, I don't think it's acceptable any more for a government to say, "You've got to wait a couple of weeks for the report." If the information is flowing in, then I think I, as a legislator representing the public interest, should have access to that immediately, as fast as the government gets it.

What I'm asking for is some kind of idea from you about how we set up the structure of what information should be flowing out. Do you think that should just be a government's prerogative by regulation, as you said before, or do you think the whole Legislature and the Provincial Auditor should be involved in it?

**Mr Wright:** It's difficult. I think I understand the question itself, but I would say this by way of response: It's true that electronic access does permit a more informed public and provides opportunities for the public to get access to information. We have a situation, again by example, because the United States tends to be ahead of us in certain areas, that the General Accounting Office in the US at the end of every week has a list of the reports, studies etc that have been prepared and released during that week, and I, in Canada, through Internet, can make a request for that kind of information and I have it readily available to me. These are the kinds of things the electronic format permits to happen, just a generally broader dissemination of information. But as to going into the merits of who should review the program and the

disclosure—or not—of records out of that program, it's difficult to try to sort out where you should go with that.

Our office is consulted many times on new programs being developed, and we offer comments, suggestions, advice, whatever we can, to help. A lot of it has resolved itself, mostly in the privacy area. You mentioned the Ministry of Transportation. We've had a lot of interaction with them, and we're continually involved with various ministries on issues arising out of electronic access.

I simply don't feel able to comment in terms of the role of a member or the Legislative Assembly.

1150

**Mr Hayes:** There's been a lot of discussion of the issue of frivolous or vexatious requests or nuisance requests. Of course, the committee has made some recommendations, but I would like your opinion. Are there any guidelines or rules you may go by, or the various institutions or ministries? Mr Elston and many of us also feel that sometimes a request may be frivolous to you but not necessarily to me. I'd like to know how you deal with that at the present time, and if these recommendations would actually assist in dealing with that issue.

**Mr Wright:** As a starting point, I think the words themselves, "frivolous or vexatious," are a little troubling. As you say, what's frivolous to me or to you may well not be frivolous to someone else, and however you wish to try to define "vexatious" again is a bit of a problem. I think it's fair to say that there have been concerns at the municipal level in particular around what are seen to be frivolous or vexatious requests.

The other cautionary note I would sound is that it is difficult to come up with a workable clause that would address this kind of issue. Again I would refer to both Quebec and British Columbia. Their legislation does contain clauses that I think address the kind of problem.

But for me, in terms of our commission, I find it worrisome that we would be spending time—and ultimately the various proposals all seem to work their way to the commission deciding whether or not their requests are frivolous or vexatious under the right of appeal—and spending resources of the commission to focus on sort of mechanical issues whereas what we're really talking about is access to information. We're spending a tremendous amount of time and resources not only for ourselves but for the institution involved in the appeal process to end up with a conclusion: Is something frivolous or vexatious, yes or no? If we conclude it's not, then the process kicks in and away we go.

There already has been a very significant expenditure of fiscal resources on the parts of several parties in order to deal with this situation, and you're going to hear, I'm sure, from other organizations that feel very strongly about the need for this kind of clause. If you were interested in moving in that direction, then I would recommend that you might want to take a look at the British Columbia legislation. I think it's around section 43 or so of the BC legislation that it talks about requests which are repetitious or systematic as being the test.

As I say, I think the words "frivolous or vexatious" in themselves raise a lot of concerns. There's a provision



available today in terms of litigation in court around frivolous or vexatious claimants. I stand to be corrected, but I think that in the history of that kind of provision it's been used perhaps once or twice. It's not something I would see as being an answer in and of itself. I think there are other ways that can be used to address these kinds of concerns.

I also feel that the major concern, speaking from the commission, is that rather than spending time in dealing with the fundamentals of the legislation, we are dealing with some of the corollary issues, time which could be better spent in other ways.

**Mr Hayes:** You've given us a list of how many cases or requests you've dealt with. Do you have an indication of how many times you have actually said to people, "Sorry, you really don't have any grounds," or that it's not reasonable? Maybe you wouldn't call it frivolous, but have there been some where the commission has said outright that a request is unreasonable, or there are no grounds, that it's just trying to get at an individual personally or whatever?

**Mr Wright:** Again, if I may, the request is dealt with by the institution. The only time it gets to us is if there is an appeal from the decision made by the institution. By the time it gets to us, we're sort of at a different level.

I think the numbers I provided by way of mediation would include our attempts to deal with requesters. We provide them with information about early decisions we've made involving the same kinds of records so that they understand they're unlikely to get that kind of information if they proceed with their appeal. We come in a little later on in the process, as opposed to at the request stage.

**Mr Wiseman:** I'd like to have some of your comments on an issue that seems to be developing, that is, an industry that could be developing in terms of charging people for the right of privacy. For instance, with the call display telephones now, your non-listed number could become public knowledge; also, if you want your name to be removed from lists that will be sold for marketing purposes, you have to pay. I see this as perhaps a challenge to people's privacy. How do we balance this cost versus the right to know, the free market versus what I believe should be my own private information base in that no one else should have it under any circumstances?

**Mr Wright:** The best response I can make is that you give very good example around of what are called call management services: call display, and there is presently a proposal before the CRTC about call display/name, so that not only will the phone number of the caller be displayed but the name as well. Our office made submissions to the CRTC at the time of the consideration of both those types of changes, on the very point you make that there should not be a price to maintain the level of privacy you presently enjoy.

In fairness, the CRTC is moving in a direction where there will be a mechanism available, a call block mechanism, so that if I do dial out I have the ability to block the display of my name and there's no charge. They're also talking, with call display/name, about the availability of per-line blocking. In other words, I don't have to think

before I dial that I've got to hit the star, I think it is, on the telephone number pad in order to block the call; I will have the ability to get in touch with Bell or whoever the provider might be and say, "I want my line permanently blocked in terms of any information going out." Again, at no cost is how we feel.

I think that has to be the point from which you begin. If you're advancing on these new technologies, privacy considerations are a very fundamental concern. As a premise, you shouldn't have to pay to maintain the level of privacy you enjoy. As a starting point, that's where we begin.

**Mr Wiseman:** Safety versus privacy: public safety and the right to know about released prisoners; teachers and school management perhaps knowing what young offenders are there and what their crimes have been. This is always a controversial issue. It's raised on a regular basis in just about every staffroom across the province in institutions where there are young offenders and people being put in. Perhaps you could give us some comments on that, because public records, safety and privacy, safety of other kids, is something schools have been wrestling with for a long time.

**Mr Wright:** And it is. You've identified the fact that there is a very important balance to be resolved in terms of where the individual rights of one conflict with the rights of the other.

To me, it's been interesting, because we have followed the kinds of discussions you've just outlined very closely, and I think the act itself has worked. There's a provision in there that permits the disclosure of information when issues of public safety are involved. In fact, it has been used on a number of occasions over the last year by police departments when they've felt they needed to advise the public about the release of a particular individual into the community.

Once again, part of the problem—and this is the hard thing for us to deal with—is that the act, if it's understood and the time is taken to look at it, I don't think prohibits the kinds of balancing that have to take place. Admittedly, the balancing is necessary, no question about it, but I think the act has enough flexibility, certainly in the area you're mentioning, to permit the interests of both to be met. That's how I would respond. I don't think it acts as a prohibition.

**The Chair:** Any questions from the government? Mr Wright, I would like to thank you for appearing before the committee this morning.

**Mr Hope:** He is returning?

**The Chair:** Yes, on January 25, I believe.

**Mr Hope:** He has so much information.

**The Chair:** I imagine he's got a telephone number too and that you can contact him there.

**Mr Wright:** I certainly do.

**Interjection:** With call display.

**Mr Wiseman:** And is that number public?

**Mr Wright:** Oh, it certainly is, yes, but no call display or anything like that.

**The Chair:** We'll see you back here on January 25.



This committee is recessed until 2 o'clock.

*The committee recessed from 1201 to 1404.*

**The Chair:** I'd like to welcome everyone to the standing committee on the Legislative Assembly. We're going to be reviewing the Municipal Freedom of Information and Protection of Privacy Act, section 55.

#### COLLEGE OF PSYCHOLOGISTS OF ONTARIO

**The Chair:** Our first presenter this afternoon is Ms Yarrow, the registrar of the College of Psychologists of Ontario. Welcome. We have half an hour, and perhaps make your presentation and leave some time at the end for questions from the committee. You may begin.

**Dr Catherine Yarrow:** Thank you very much for the opportunity to speak to this committee. I had hoped to be accompanied today by one of our consultants as well, Dr Bruce Quarrington, who has contributed in large measure to our written submission. He is ill, unfortunately.

This opportunity has been a very timely one for our college, as we've become aware of a particular concern with respect to the Freedom of Information and Protection of Privacy Act with respect to its provisions for release of information and exemptions respecting the release of information.

As you know, the role of the College of Psychologists is the protection of the public in its receipt of services from members of our profession. We are responsible for ensuring that services are provided competently and ethically and for establishment of standards.

One area of particular concern to our college and to our profession is the area of appropriate release of information. Certainly the maintenance of confidentiality of client records is critical, but on the other hand, the release of information and the appropriate release of information to clients is also important so that clients may be appropriately informed of what decisions are being made respecting their own interests.

However, we as a profession have at least two concerns about information which we believe should not be released. The act addresses one of those, and that is certainly the provision for non-release of information which could cause harm to the client or to anyone else. The other area where we have concern is not, in our opinion, well addressed by the legislation and has become an issue of increasing concern as we've had some experience with its implications.

In particular, our concerns revolve around psychological test information. As it stands now, in the act itself and in some other court decisions, there is not a clear exemption to prevent release of psychological test data. In particular, we are concerned not just about the answers an individual may give to a psychological test but information which either directly or indirectly might permit the individual, and hence the public at large, to deduce or indeed to actually determine what the specific questions and content and tasks are in psychological tests.

Briefly, I'd like to digress to speak about the nature of psychological tests and how they differ from examinations and so forth. As you are probably aware and as you may know from a submission which I believe you've received from the test publishers themselves, psychologi-

cal tests are the result of years of research, sampling and standardization. They are not like school examinations, where you may develop a set of questions and then replace them with another set of questions if someone discovers the first set and invalidates the examination. Rather, scores of samples are taken from the population at large. Thousands upon thousands of individuals are tested, the goal being to develop a set of test questions, a set of test tasks, which will distribute the performance of the population in what's called a normal distribution, that is, most members of a particular population would score around the median, around 50%, correct on any particular test or would score around 50% in answering in a particular way on a test, and a few, a small percentage of the population, would score relatively high or relatively low on the test. Having standardized the test, it then allows for comparison of the performance of any one individual to the population at large. Hence the normative data.

In addition, standardized tests permit research and allow the profession of psychology, the field of psychology, to make predictions, on the basis of certain types of test scores, how someone might behave, how someone might perform in a learning situation. The tests can cover everything from intelligence tests respecting learning potential to tests for neuropsychological problems, personality characteristics, psychopathology and so forth.

As you might imagine, anything which might result in members of the public having access to the specific test questions or test protocols in advance invalidates the value of the test. The tests are standardized on the presumption that the individual has no specific knowledge or exposure to the actual format of the test and to the actual content of the test.

Where our concern arises is in the provisions in the legislation respecting release of information. As I've said earlier, we quite endorse the ability of clients to access publicly held information about themselves. The concern arises when someone requests a file which contains psychological test data.

#### 1410

To obtain simply a score, an indication of how an individual performed in a test, is quite appropriate and we certainly have no concerns about that, but the nature of many psychological tests is that the scoring is done on an answer sheet. The answers themselves may be written in by the test administrator on what's called a test protocol. The test protocol may or may not contain the actual questions or an actual description of the task when the test is administered. So it may be possible if someone were to be released a copy of their test answers, with or without the scoring, that the person might either deduce from the nature of the answers what the original task was or what the question was or there may be sufficient descriptors right on the answer sheet to give away what the test question was.

If a member of the public has that information and then is retested, that reduces the likelihood that they will be relatively naïve to the test over and above whatever they would've remembered anyway, and if that information is then disseminated, either by chance or wilfully, by



that individual to other members of the public so that the public gets more and more information respecting the content of the test, the test then becomes invalid and can no longer be used in the service of the public in assisting in assessing needs for specific educational programs, in the case of their use in education; in the case of corrections, in making recommendations and decisions respecting parole or treatment in corrections; in working with individuals in community and social services respecting any particular needs someone might have for service. It won't be possible to do adequate assessments and to make adequate recommendations. Therefore, there's a considerable loss to the public.

In actually reviewing the provisions of the act itself, section 10 provides for specific exemptions where it speaks to "a head shall refuse to disclose a record that reveals a trade secret or a scientific, technical, commercial, financial...information." It's arguable whether a test protocol is a trade secret. I think you may find that the test publishers will say that it is. The result of that dissemination might be that such information is no longer available to the institution—for instance, in the extreme case, I suppose, that the test might not be made available to the institution—or an undue loss or gain to any person, group, committee or financial institution or agency. I would put to you that that is probably more the concern of the test publishers, and you will hear from them about that.

The matter we would like addressed, that is to say, the invalidation of these tests and the removal of these tests from the repertoire of professional psychology for providing adequate services to the public, is not adequately addressed in this set of provisions.

In section 11, it speaks to the discretionary ability of a head to refuse to disclose a record. A head may refuse to disclose a record that contains, again, trade secrets or financial, commercial, scientific or technical information in clause (a).

The only other provision that comes close is clause (h), which speaks to questions that are to be used in an examination or test for an educational purpose. Again, the use of psychological tests is much broader than for an educational purpose, and I suspect that clause (h) may be largely addressed literally to examination questions that are used for providing grades for performance in particular courses or programs. Psychological tests, as I've already said, are used in a much wider variety of settings for a wider variety of purposes, the educational domain being only one area, and certainly in corrections, Community and Social Services, Health and so forth, even in employment assessment and so on. So there are many, many more situations in which these tests are used.

To summarize, psychology is a profession which has been recognized in the Regulated Health Professions Act as having the skills and the expertise to perform the controlled act of communicating a clinical diagnosis. Part of the tools used by the profession of psychology are these well-standardized psychological tests. Our concern is that the Municipal Freedom of Information and Protection of Privacy Act does not adequately protect these tests, does not adequately protect their integrity and

therefore their validity, and they are at risk of being lost as a useful tool in the provision of services to the public should the act remain in its present form.

I won't speak to the specific situation, but there is even currently now, I believe, a hearing coming up to address this issue in a situation where there has been a request for release of information which, if released, would jeopardize the validity of one particular, well-standardized intelligence test that's been used not only throughout North America but in many areas of the world.

I believe you've received submissions from the Canadian Psychological Association as well as the Ontario Psychological Association, and we've had concern about this particular issue from the American Psychological Association as well, as this will affect all of us. These tests, as I say, are used throughout North America and throughout much of the world. There is concern that if in Ontario we expose these tests to invalidation, there will be significant repercussions.

I would like to stop here and entertain questions.

**Mr Tilson:** I saw a movie on this very topic, where somebody studied all kinds of tests—they knew they were going to be tested—and they fooled everyone. Of course, that's Hollywood, but I understand the issue.

You specified the non-release of information that could cause harm. Could you elaborate on that point? Who says it could cause harm?

**Dr Yarrow:** Usually, when these types of requests come through a public agency, the individual in that agency in a position to make decisions about release may well consult with the professional who prepared the report or a professional who has the expertise to interpret a particular report or information on a particular file.

1420

For instance, in the case of psychology, if there were information on a file which, if it were provided to the client, if the client were unstable, suicidal, homicidal, had some potential for some type of violent acting out against either him/herself or a member of the public, and if release of the opinion of, say, the assessing psychologist might inflame that individual to some type of action, either to harm him/herself or a member of the public, that would be a case in which, arguably—actually, not even arguably—the exemption is provided that that material might be withheld from someone seeking it.

**Mr Tilson:** Then, of course, there would be the usual appeal process if someone didn't like that decision.

**Dr Yarrow:** Yes.

**Mr Tilson:** All right. In terms of keeping tests confidential, I had never thought of the issue you raised, other than seeing this Hollywood movie. Aren't all these tests available through textbooks?

**Dr Yarrow:** No. In fact, that's a point I should have made, and I'm glad you brought it up. The test publishers themselves require the completion of a form which indicates the eligibility of the purchaser to acquire the actual test protocols, the questionnaires, the booklets and so forth. At a minimum, master's level training in psychology is typically required, even for the purchase of these tests. In many cases the test publishers will require



evidence of not only graduate level training but, in some cases, of professional certification in the field.

**Mr Tilson:** As to those specific tests, I can understand that. But before you even get to that stage, aren't there basic tests written to assist people who are qualifying through their master's or their doctorate? It would seem to me that there are basic tests to reach the point of the tests you're speaking of.

**Dr Yarrow:** Are you speaking of tests which give examples to these trainee psychologists or whoever?

**Mr Tilson:** Yes, the basis that develops these tests that you wish to be excluded.

**Dr Yarrow:** I'll speak particularly to the training of, say, psychology students. When they are taught courses in ethics and psychological assessment, at the same time they are also taught about the necessity to keep these tests confidential, if you like, to maintain the validity.

**Mr Tilson:** I'm not challenging that. I'm not challenging the professionalism of students or whoever may have this training. I'm asking, is not that information, or the basic information, available at your local library or your university library?

**Dr Yarrow:** No, it's not, and it should not be. It's available in restricted ways only to people who are eligible to actually see those tests. This is a subject that comes up for some debate and that's been challenged in a number of library systems.

**Mr Tilson:** If I wanted to go to my local library—not my local library perhaps, but an academic library, are you telling me that the academic library won't allow me to see certain books?

**Dr Yarrow:** It shouldn't, that's right.

**Mr Tilson:** Is there legislation that precludes that or is that what you want to be?

**Dr Yarrow:** That's policy at this stage. I don't know that there's legislation to preclude it, but it's policy, it's part of our own standards. Any university library with this kind of information must keep it separately in a test library which should be accessed only by qualified individuals.

**Mr Tilson:** What if I want to get that information. How do I get it?

**Dr Yarrow:** You'd have to qualify to obtain it.

**Mr Tilson:** But there's no law you know of that precludes someone like me from getting that information.

**Dr Yarrow:** Yes, I don't know of it being law. It's simply a standard practice and policy.

**Mr Tilson:** It's simply policy of the specific library.

**Dr Yarrow:** That's right, yes.

**Mr Drummond White (Durham Centre):** There are tremendous issues that come out of this. Frankly, as Mr Tilson was illustrating, we're talking about a closed circle. The people who have a right to make a decision about what information should be disclosed are most likely the very people who put that information in the file to start with, or their colleagues, their immediate colleagues. It's very much a self-protecting circle.

I'm curious about which professions should have the

right to not disclose information, not to enter them into common files, whether it's in a school board or a children's aid society file or whatever. In your opinion, which professions should have that right?

**Dr Yarrow:** I'd like to address your first comment before I come to your question. It sounds like a closed circle, possibly. However, a regulated profession is a profession which is accountable by statute, and a member of that profession is accountable for the judgements and decisions that are made, so a member of the public who may be concerned that a decision is an inappropriate one or that the service provided has been somehow inadequate or inappropriate has recourse. That recourse can be legal recourse, in many cases. There is nothing inappropriate from the point of view of our standards to request that the confidential test material be referred to an independent professional for assessment and reinterpretation and re-evaluation. The client can certainly seek another opinion about whether or not these tests administered were administered appropriately and interpreted appropriately and the information used appropriately.

So there is recourse. It's not completely closed, in that regard. If there were ever any indication, that the professional originally providing the service had done so inappropriately, there would be recourse to the college itself.

**Mr White:** I appreciate that there would be recourse through a self-regulatory body, but that self-regulatory body also is composed primarily of psychologists and some lay members.

**Dr Yarrow:** Just under 50% lay members.

**Mr White:** But it would be, like the legal profession, a body. It would to a great degree be informed by its own practices and by its own ethics.

**Dr Yarrow:** That's quite true. There are standards of practice in the profession that are held to be very important.

**Mr White:** And I would doubt that that recourse would very frequently be drawn upon. If we could, though, what in your opinion would be professions that should be withholding information from a common file in a public institution such as a school board or a children's aid society?

**Dr Yarrow:** In my opinion, the question is rather broadly stated. I'm not for a moment suggesting that a profession should withhold information in the sense that all psychological information be withheld. We are particularly addressing subsets of information.

**Mr White:** Well, given the same criterion in terms of the mental health stability of the patient, client, whatever.

**Dr Yarrow:** I'm not sure which other professions would utilize tests of the nature that we are speaking to.

**Mr White:** Information.

**Dr Yarrow:** But I'm talking particularly about the test protocols themselves; not information about performance of an individual, but a test which is a standardized test which could be invalidated with practice, if you like, with familiarity and with practice. I think this is some-



thing that tends to be particular to our profession. It's difficult to imagine another profession with exactly those same requirements, so I'm not sure I'd want to make that type of generalization.

**The Chair:** I'm sorry, we're going to have to go on. Mr White has taken up Mr Wiseman's time for questions. We go to Mr Elston.

**Mr Elston:** If Mr Wiseman has a brief question, I don't mind him putting it in my time.

**Mr Wiseman:** Thank you, that's very kind.

My question has to do with balance. This legislation strikes me as being the kind of legislation where we have to balance certain factors. In this case, I'm wondering how we can balance the right of the individual to face the accuser, which of course is the test and the interpretation of the test with respect to cultural biases, experiential gaps: parole officers or whatever, or even employers saying they're not going to hire somebody on the basis of the tests that have been done. We have to balance that in terms of what we put in the legislation and I think we need some idea of this balance from you.

**Dr Yarrow:** Surely. As I mentioned earlier, we certainly anticipate, if someone feels they've been tested inappropriately or assessed inappropriately or even that there's been bias in a procedure, that that individual have recourse and can certainly have recourse to a second opinion and have all of the original data transmitted to someone for review, with the permission of the client, for a second opinion. I'm not sure of the main thrust of your question, though. Is it really what recourse exists or—

**Mr Wiseman:** When the IQ testing was done in the late 1920s and early 1930s, that was held as gospel, and then they found out that there were cultural problems, learning gap problems, and that a person who could be extremely bright in one context would wind up being not so bright in another context. How would you be able to weed out those kinds of scenarios within a test? If we were to put into the legislation the kind of protection you're asking for, who would be the challenger of that kind of problem that may slip into the testing, in all good faith, without people really recognizing the problem?

**Dr Yarrow:** I'll go from the individual case to the more general case. Any individual would know which specific tests had been administered. The profession at large is certainly responsible to make itself aware, to inform itself about any existing or known biases, cultural or otherwise, in the tests. Research continues to be done, both in the academic setting and in the applied professional settings, respecting many of the tests to evaluate the bias. As you say, we've become more aware in our multicultural societies in North America that members of different cultural groups may score differently.

In response to that, there are two areas of responsibility. One is in the basic research, which can be conducted in the academic setting but which can certainly be driven and the questions raised by members of the public, by public representatives in the legislatures, by inquiring professionals and academics and so forth. Then it's the responsibility of the practising professionals to be aware of that information, if there is bias, and to apply appro-

priate discretion in administering tests. Many tests already have different norms developed for different cultural groups, recognizing that different groups do perform differently on particular tests. The professional applying the test is responsible to know about those and to use the appropriate comparison group when interpreting tests.

1430

**Mr Elston:** Basically, isn't this issue really about proprietary rights as opposed to—if I make one of these tests up and somebody divulges it to the public, my work is gone, right? Basically, the saleable market for my product is no longer in existence because it's not a clean, fresh instrument for testing the student. Isn't that really a big part of the issue?

**Dr Yarrow:** That's a fact. It's not the issue for us. It would certainly be an issue for the test publishers, for whom this is their livelihood. For us, there are only, in the field of intelligence testing, two or three major tests utilized, and those have been well standardized and well researched over the years. Of those tests, if any one of those were lost to the public domain, that is, were no longer available to be utilized, that greatly restricts the objective testing that can be conducted in order to assist individuals in making recommendations for educational placement, in order to assess neuropsychological deficits, in order to assist in placement for job training and so forth. It would be a significant compromise to what could be done for the—

**Mr Elston:** Basically, isn't what you're asking the public to do, by agreeing that there should be no access to these, just to trust the College of Psychologists and the profession itself to do the best job possible, without giving the broadest public the satisfaction of being able to make an inquiry behind that trust? Isn't that really the conundrum we have?

**Dr Yarrow:** That's certainly a part of it, and we are responsible for that trust already by statute. We are responsible to do that. As I said, the other side of the concern is whether there is some intermediate compromise, and I don't know how it would work, in which if you allowed an individual to see the test protocol or sufficient information for the individual to become fully aware of the test content, it would invalidate future applications for that individual. One might argue that the individual might be required, through some mechanism, to give his or her word not to transmit that information anywhere else and to contain the knowledge of that information. Whether that's a reliable means and compromise, I really don't know.

I guess we're erring on the side of conservatism: not to place that trust in the hands of individual members of the public but rather to ensure that we protect the test.

**Mr Elston:** Just one last quick question, real short: How do you make the sale of this test for use in a secondary school or elementary school or post-secondary education facility if you don't have to divulge the way you do the test and the things behind the test to the individuals who have to buy into agreeing that it be used as a tool in their system, or to school trustees? How can they be asked to purchase on behalf of the public an instrument about which they have no understanding or in-



depth knowledge? I just don't understand how you can ask them to do it without asking for some kind of almost theological belief in psychological testing.

**Dr Yarrow:** We may be speaking to two slightly different things. I am addressing myself particularly to psychological tests, which should be purchased only by qualified psychological practitioners employed by the school boards.

**Mr Elston:** For use in, and that psychological tester has to be getting permission from her or his supervisors or directors—

**Dr Yarrow:** To conduct the testing.

**Mr Elston:** —or superintendents to actually do something. Otherwise, they could be doing almost anything and saying, "You can't ask me what I'm doing, but I'll give you scores for everybody."

**Dr Yarrow:** It still does not preclude information about the general nature of the tests, the rationale behind the tests, the overall procedures for administration, without giving away specifics. It's really the specifics which would affect the ability to keep an objective score on the test that we're addressing. We're not looking to keep deep, dark secrets about what we're really after or what we're really trying to get at in these tests. That's not really our issue.

**The Chair:** Ms Yarrow, I'd like to thank you for appearing before the committee today. I think we could go on for another half-hour with no problem.

**Dr Yarrow:** Thank you for the opportunity.

JOHN CREELMAN

**The Chair:** Mr John Creelman, come forward, please. Welcome. We have half an hour, and we hope you can make your presentation and leave some time at the end for questions. As you were sitting back there, you saw that many members are anxious to ask questions about your presentation. You may begin.

**Mr John Creelman:** Thank you, Mr Chairman, members of the committee. My name is John Creelman and I am a municipal councillor in Mono township, which is situated in Dufferin county. I am here today, however, in my personal capacity.

My interest in freedom of information goes back to the late 1970s when, as senior researcher for the Liberal Party, I helped prepare a portion of its submission to the royal commission established to examine the matter. Some members may also recall that I appeared before a legislative committee when this act was originally under consideration. As contributing editor at that time of our weekly newspaper, the Orangeville Citizen, I was concerned that access to information and records would be meaningless without a corresponding opening up of the business of municipal councils and their committees. Despite a different vantage point today, I still have that concern.

More recently, I assisted our local MPP, Mr Tilson, to establish his office here at Queen's Park.

As I prepared this submission, it became apparent that almost anything I could say about the municipal act could also be said about its provincial counterpart. While I

realize the provincial statute has recently undergone a similar review, I would hope that your report will urge parallel changes to that act where appropriate.

First and foremost, and I can't stress this too strongly, we can ill afford to become complacent or self-congratulatory over the existence of FOI legislation or its apparent success in opening up government to greater scrutiny. Indeed, some might argue that we have only a veneer of openness, that with all the various exemptions, the public still only finds out what we in government want them to know.

Second, I am particularly alarmed that a fee-for-information philosophy threatens the entire premise behind both acts. Under the guise of cost recovery, a popular concept these days, government could be tempted to effectively shut down the flow of embarrassing information through the persistent and systematic imposition of unreasonable fees for the recovery of information which in many cases ought to be freely available. Let's not forget that the public has already paid once for the information it seeks through these acts. Further, we should not be asked to finance the reorganization of government information into a form which reasonable people might expect to find for purposes of accountability, cost control, normal accounting and information management. It should be in that form to begin with.

Third, I believe the public's right to know how its money is spent by government must be the transcending principle behind all FOI legislation. It is therefore inconceivable to me that any statute that purports to ensure that right also exempts public servants' remuneration from proper scrutiny. We elected officials take for granted the right of our constituents to know how much we're paid. Why should it be any different for public servants, whose salaries come from the same source?

1440

It should be noted here that we aren't talking about a long-standing right to privacy. Exact salaries of municipal officials were routinely recorded in bylaws passed in open session by municipal councils. Public servants at the provincial level earning over a certain amount had their salaries and expenses published annually in public accounts. Suddenly, and coincident with the breaking of the \$100,000 salary level at the provincial level and the \$50,000 level municipally by more and more employees, the public was denied specifics. Instead, with the passage of these two acts, we were offered salary ranges which were and are so broad as to be utterly meaningless.

I would suggest there is a further problem with the two acts. They don't differentiate between elected and non-elected public servants. One can be excused for wondering whether that means that disclosure of elected officials' salaries should be treated in the same way as disclosure of public servants' salaries.

I recently wrote to Commissioner Tom Wright about this and other questions I have regarding the acts. In his response dated December 22, Mr Wright admits that neither act makes a distinction between the salaries of elected and non-elected officials, although, and I quote from his letter, "The acts work in a way that there is a



distinction in outcome, ie, the total remuneration of elected officials is disclosed." With due respect to Mr Wright, I'm not so sure there still isn't a problem here.

Mr Wright went on to tell me that nearly a year ago he wrote to the then Management Board chair Tony Silipo, urging the amendment of both acts to permit the disclosure of actual salaries of public servants. Sadly, he also indicated that he didn't know whether the government intended to proceed with amendments to the acts in the area of salary disclosure.

Frankly, I can't see how this committee can do anything other than concur with the commissioner's desire to see amendments to the acts. Here we are nearly a year later, and several private members' bills and resolutions calling for the same sort of action have since been tabled in the House. The government has recently required disclosure of pay packages of senior executives of public companies, a move I applaud, but unlike investors in certain companies, the government's "shareholders" are still without the fundamental right to scrutinize how their employees are paid.

Another issue which I raised with Commissioner Wright, and I realize this may be outside the purview of this committee today, is the fact that the Legislative Assembly is not covered by the provincial freedom of information act. When I decided to test my theory that employees of MPPs, cabinet ministers and party caucus staff have something closer to a contract-for-personal-services arrangement than a regular public servant relationship with their employer, I found out there was no head, for purposes of the act, at the Legislature to whom I could make an FOI application. If my theory is correct, these employees' remuneration is not covered by protection-of-privacy provisions of the act. I raised this matter with the commissioner in my letter, but prudently he didn't deal with it in his response. I hope this committee will consider the irony of the Legislative Assembly's exemption from the provisions of the provincial act.

Thank you. I would be pleased to answer questions.

**The Chair:** We'll start off with questions from the government party. Do you want me to come back? Okay, I'm going to go to the Conservatives. Mr Tilson.

**Mr Tilson:** Never turn down a question, particularly from a member of the great riding of Dufferin-Peel.

As to the whole issue of accountability and salaries, your theory about caucus staff and indeed MPPs is an interesting one, and I'm sure the committee will be looking at that more carefully.

I'd like you to talk in your capacity as someone who's had some experience in municipal politics—and I've indicated that I have, as I know other members of this committee have—dealing not only with salaries but with allegedly confidential information. In other words, there's a resolution to move into private session just to discuss property and personnel matters, I think the terminology is. Then you get in there and all of a sudden someone starts to talk about something else. Has that happened frequently in your experience?

**Mr Creelman:** Actually, it happens all the time. My concern when I last appeared before a legislative commit-

tee was that there was a discrepancy between the policy of the then government to open up records and documents to scrutiny but not do anything to amend the Municipal Act to ensure that municipal councillors abided by some reasonable rules regarding in camera sessions. I realize there has been draft legislation which will touch on that. It is pending, as I understand it. It's tied up with municipal conflict-of-interest matters as well.

I've had experience as a journalist, a consultant and a municipal councillor. I've probably filed a good half-dozen FOI applications; I've successfully appealed one as well. I guess my concern is that we're very happy to say, "Yes, these various documents are available," but the actual mechanical workings of municipal councils are still shrouded in a certain amount of secrecy.

Let me give you one clear example that is of particular concern to me right now. Under the act, there is an exemption for documents related to annexation matters. Here is an event in the life of the municipality that I think has no equal, whereby a municipality is either annexing an adjacent municipality or is the subject of an annexation attempt by an adjacent municipality.

The public really doesn't find out anything through this legislation and it doesn't find out anything about it through the municipal boundaries legislation, or indeed through the activities of its own municipal council until such time as basically the deal is done and the storyboards go up on the wall and open houses are organized. The whole process of disclosure of that is, I think, contrived and designed to ensure a minimum of public participation. That's just one area that is of some concern and an exemption that's contained in this act.

**Mr Tilson:** The real problem is that you start talking about what a "meeting" is. Whether you're talking about meetings between municipalities over annexation or waste management or—I can't think of any other examples, but those are two specific examples. What's a meeting? What about municipal councillors meeting outside the purview of their municipal councils as such, meeting with other municipal councils to discuss matters that may have been in open session in their own meetings, but because they're not meetings, they can really do anything they like? Have you had much experience with that? Annexation obviously may be one.

**Mr Creelman:** Yes. There are meetings and then there are meetings. The Municipal Act, as I understand it, is very explicit inasmuch as it demands the passage of a bylaw or a resolution to enact the will of council. I've found it ironic that prior to this legislation, as an example, we would pass a bylaw that would set out the specific remuneration of employees, but after this act was brought in, we would pass a bylaw that would vaguely allude to the existence of a pay grid that, to interpret, you'd need a couple of other documents which were not in bylaw form.

On the document side, there are some things going on that are not really very straightforward. On the procedural side at the municipal level, I think it's the same thing. A few of us who've gotten into municipal politics with a background in political work and a background in journalism are very conscientious about reminding our



colleagues that maybe what they're doing is not on the up and up. Unfortunately, there are too few of us around, and I have to say that at times you feel like you get a bit co-opted as well.

1450

**Mr Tilson:** How do you know whether the salaries you may be paying the staff at Mono township are reasonable?

**Mr Creelman:** That's a good point as well, because we really can't compare with anyone else either. We hire a consultant who comes in and does a pay equity study or we hire a consultant who comes in and says all the salaries are too low in their experience. They of course are precluded from giving us specifics; we simply have to take their word for it. Everybody is acting in isolation of everyone else under this legislation, and I think that's very regrettable.

We had a case in Dufferin county that was really quite incredible a number of years ago. The paper I work for made application to the county for the percentage increases that staff had received over a period of time; I think it was three years. The paper knew it couldn't get precise salaries, so it was content to simply look at the percentage increases. The municipality, I think wrongly interpreting the act, said the paper was not entitled to it. It took a change in councils and a municipal election for a decision to be made to release percentage increases, which in no way compromised the actual salaries of the individuals being paid by the municipality.

**Mr Hayes:** Mr Creelman, in your second-last paragraph, you talk about your theory "that employees of MPPs, cabinet ministers and party caucus staff have something closer to a contract-for-personal-services arrangement than a regular public servant relationship with their employer." Maybe you can be a little more specific. I'm looking at employees, for example, of our party, the New Democratic Party, where most of them actually have collective agreements which spell out what their salaries are. There isn't any real secret there. I don't know what arrangements the other parties have, whether they pay higher or lower. Maybe you could be a little more specific about what you mean here, because to me it is a little vague. What more are you asking for here?

**Mr Creelman:** I threw this in only to point out that in the absence of being able to get at real salaries, one becomes very inventive in trying to find ways around the act. I've noticed, for instance, that a disclosure does not constitute an unjustified invasion of privacy if—and then there are three items. One of them has to do with disclosure of the financial details or other details of a contract for personal services. In my experience at Queen's Park in the 1970s and more recently, while I wasn't asked to sign what might be described as a personal services contract with my employer, it was made fairly clear that I was not in the same category as a regular public servant. I think we fall into some kind of position in between.

What I was looking at was to make an application to the Legislative Assembly for information, which in all probability would have been turned down and then I would have appealed this question to the commissioner.

I ran into the problem that there is no head to whom I can make an application and therefore no opportunity for an appeal to be launched to settle the issue as to whether these are contract employees or regular public servants as contemplated by the act. Then I was told that the Legislative Assembly is in fact exempt from provisions of the provincial act.

**Mr Hayes:** What is Peregrine Farms?

**Mr Creelman:** That's just the name of my farm north of Orangeville.

**Mr Wiseman:** You raised an interesting point a little earlier, and I think Mr Tilson was going down that road as well; that is, a bunch of councillors who get together and have dinner together and do all their horse-trading, "If you give me this, I'll give you that," and so on, and then they go into council the next day and the motions just come up, "All in favour?" and everybody's hand goes up. Give us something we can hang our hat on in terms of trying to put an end to that kind of dealmaking so that everything is done on the council floor.

**Mr Creelman:** I understand that process and I see nothing necessarily wrong with it. That happens in the Legislature; House leaders' meetings as a case in point. But what concerns me, and I get back to the boundaries negotiation process as my example, is that that's a whole process that goes on for a very long period of time outside the view of the public and the press, and that's really when the decisions are made. It's presented as a fait accompli, and we've all seen the consequences of that. I'm convinced that bad decisions get made behind closed doors more often than not.

**Mr Wiseman:** But in the instance where you're talking about the House leaders, if a House leader goes back to his caucus with a bad idea, surely there's going to be some noise made—maybe not in Mr Elston's caucus, where everybody just toes the line.

**Mr Elston:** We have a very persuasive House leader.

**Mr Wiseman:** But I can tell you that with the rugged individuals in our caucus that's not the case. But where is the opportunity for the public to make presentations to council on the issues when they're being delivered and discussed at the local restaurant or someplace and then they just go into council the next day and go one, two, three, and it's gone? You see, there is a distinction between these, where this horse-trading going on doesn't take place on the council floor and there is no debate. The individual who has an argument with what's going on very rarely has opportunity to make any kind of presentation at council because it can be all done.

**Mr Creelman:** Again, those of us who come at municipal politics from a different direction than some are on guard for abuses of the horse-trading over the dinner table.

**Mr Wiseman:** But you're rare.

**Mr Creelman:** We're rare; I think we're fairly rare. The other thing is that we have, at least in our municipality, tried to build in safeguards in our own procedural bylaw—and we are a municipality that has a procedural bylaw; a great many don't. One of the aspects of our procedural bylaw is a question period for the public, and



that goes ahead every single council meeting.

**Mr Elston:** John, I'm sorry I had to step out for a couple of minutes. I'm interested in your taking issue with the idea of a fee for information, on the first page, and if somebody's already asked this question, let me know. It seems to me that while we may have paid for the accumulation of that information on one level as a public, I may not want to pay for your accessing that information for the purposes of your job at the Orangeville Citizen, for instance. How do you put the balance? Your argument is okay as far as it goes, but why should I pay the cost of having public officials run through the records so that you can write an editorial or a book or so you can politically undertake some criticism of government activities. Could you respond to that issue?

**Mr Creelman:** It's a fair question, and I try to deal with it in the sentence that follows; that is, I think there should be an expectation that information is found in a reasonable, organized form, that one shouldn't have to spend thousands of dollars in order for government to sort through information and organize it in a fashion that a normal person would expect it to exist in in the first instance.

Some of the cases that have caught media attention have had to do with the disclosure of public servants' restaurant bills and things like that, and there have been a number of them over the years. The fees that have been requested for that kind of information have, in some instances, been absolutely outrageous. I remember McAuliffe's fight with the CBC, when he was working for the CBC, over that matter.

**Mr Elston:** He doesn't fight with the government any more.

**Mr Tilson:** He's on side.

**Mr Creelman:** I realize that.

**Mr Elston:** In fact, somebody should ask for his expenses, if they haven't already.

**Mr Creelman:** What he was asking for in that case was nothing more than what an auditor would walk into the same office and ask for.

**Mr Elston:** And get.

**Mr Creelman:** And get, and get fairly quickly and with a limited amount of hassle. I don't know how you'd legislate it, but I think there should be an expectation that the material is in a reasonable form and that we're not subsidizing the reorganization of it.

**Mr Elston:** John, another issue that strikes close to municipal politicians but is actually headed by the province now is assessment. I've had a number of complaints from individuals whose properties have been assessed and have been told, "We've reassessed you because we've got three other comparable properties," and they say you should be charged more on your assessment notices. Then when you ask the question, "Which properties are they?" you are told, "We cannot tell you, because that is in violation of the privacy of those other people." Have you ever had that as a problem municipally, addressed to you from one of your ratepayers who feels restricted by that policy, and would you make any suggestion about what should be done about that as a problem?

1500

**Mr Creelman:** I haven't personally had that issue raised, but there are ways of doing assessments and valuations that could rely on publicly disclosed trades of real estate in the local area, and I don't really think that anyone's aggrieved by that kind of disclosure.

**Mr Elston:** It seems interesting, though, that before you could find out who the comparator is you'd have to find out which properties the assessor used, and they say they're not at liberty to disclose it. From my point of view, I don't think it's fair. It's the same point as Mr Wiseman used with respect to the previous presenter. You have a right to know what the case is that really establishes your position, I suppose, to use it in the broadest sense.

It seems to me that in some cases the freedom of information act indeed is being used as a barrier to what normally was routinely disclosed. You used to get the information disclosed about whose properties were being used to compare to yours. Then people found out that if you disclosed that, people would go out and say on appeal, "My house is only 2,200 square feet instead of 2,450 and my garage is not enclosed" and a bunch of things like that. It seemed to me that the freedom of information act may be used as a shelter.

**Mr Creelman:** Yet there's language in here which says, and somebody can correct me if I'm wrong, something to the effect that the act should not be used to suppress information which historically has been available, except in the case of privacy issues. Quite frankly, I think both acts have gone overboard in the area of privacy. I know of very good cases where there shouldn't be disclosure of private information, but in trying to achieve this balance that people talk about, I think the balance has become skewed somewhat and has got to be righted again in light of people's increased demands for accountability.

**The Chair:** Mr Creelman, I'd like to thank you for your presentation before this committee.

**Mr Hope:** Mr Chair, I have a couple of things: This morning during the presentation, a lot of reference was made to the BC act. I'm wondering if it would be possible to get a copy of the BC act.

**Interjection:** Saskatchewan and Quebec too.

**Mr Hope:** Mostly BC, because I've seen a lot of BC reference, so I'm going to use BC, to limit the amount of staff work.

**Ms Susan Swift:** Did you want the whole act or the sections the commissioner referred to this morning?

**Mr Hope:** My own preference would be the whole act. It's probably easier to get the whole act than to get specific areas of it.

Another question: I notice that we're going to have a number of councils in presentations to this committee, and I'm hearing about openness etc. I'm wondering, if it's available, how many councils hold their meetings during the daytime without public access, like television or whatever. We're talking about the public not knowing until something happens. That came up in a presentation, but I never had an opportunity to ask my question



because time was used up.

If we're talking about openness, not only through legislation but openness to the general public, information is very important. I can go into more detail with you later, but we're going to hear from councils saying "openness," yet their meetings are conducted at a time when the general public, who are working, has no access to the general information being shared. I know I have that in my own county council. I would like to try to find out what information is around there. Maybe there's something we ought to do to make sure that council meetings are conducted during certain hours to allow more openness for municipally affected issues to be brought forward.

DAVID HELWIG

**The Chair:** We have Mr Helwig from the Business Times. Welcome. We have half an hour, and we hope you can leave some time at the end for members questions.

**Mr David Helwig:** London Magazine, a publication in London, England, wrote 247 years ago that "Every subject has not only the right, but is duty bound, to inquire into the public measures pursued." That phrase, "public measures," became the working title of a two-year investigative journalistic endeavour which I conducted shortly after the Municipal Freedom of Information and Protection of Privacy Act came into effect in January 1991. So I appear before you as a user of the legislation, as a journalist, and as editor of a small business publication in the city of London, Ontario.

This investigation, which made extensive use of MFIPPA, if I can refer to the statute in that way, is believed to be the most rigorous and intensive ever conducted into secrecy at the municipal level anywhere. Using the access provisions contained in this new law, I was able to shed light on a wide range of previously secret activities of a municipal council in St Thomas, Ontario, to such an extent that this project has been recognized by six national and international awards for investigative journalism, including a citation for meritorious public service from the Governor General of Canada.

Based on this very enlightening exercise, I wish to make a number of observations and a number of recommendations to this committee; first, an observation that this law, although by no means flawless, has actually been a very useful and beneficial first step towards opening public business to the public. I think it's important that it be recognized in that way. I am aware that this legislation has received criticism, some of it from journalistic colleagues, but I think it's very important to look at what rights of access existed previously.

Except for limited access to documents in the possession of municipal clerks—at the time, that was subsection 78(1) of the Municipal Act—there was virtually no right of access for journalists and other ordinary members of the public. If what I wanted was in the city engineer's office, if it was in the city treasurer's office, if it was in the administrator's office, I could be lawfully denied access.

All that, of course, has changed under freedom of

information. Using this powerful new law, I discovered that local municipal politicians were routinely, in my municipality, dealing with contentious issues in secret meetings. This was a routine practice; it was not an exception. This was based on something like 18 months of detailed surveillance using this legislation.

I can tell you we used this legislation perhaps in a way in which it was never intended. We used it as a legitimacy test for closed meetings. I didn't really come here to discuss the broader issue of the Municipal Act and informal meetings and the like, closed meetings, but it's interesting that we used the legislation in that way. What we did was that every time we learned that this particular municipality had held a closed meeting, we ordered the minutes of that under the municipal freedom of information act.

Our rationale was that this legislation contained exemptions for almost anything conceivable in terms of a legitimate reason for holding a closed meeting. If we got anything in terms of documents, it was immediately suspicious: Why did we get anything? We found that massive amounts of documentation came out of these closed meetings and we found it very, very hard to justify in terms of the public interest the sorts of things that were going through. Let me give you some examples.

We found city council in one case using a closed meeting to approve the purchase of new firefighting suits for every firefighter in the municipality. It waived its own tendering bylaw, which is supposed to safeguard the integrity and impartiality of the purchasing process. They waived it. What was the rationale for that? We will never know, because it happened in a closed meeting. All we have is the result.

1510

We found the local police services board secretly bullying a local author, who'd been commissioned to write a history of the St Thomas police. What happened was that they got a little more than they bargained for. It was supposed to be a nice, benign little history for school children and they got instead a rollicking account of cops indulging in booze and bribes and brothels. I'll spare you the details, but when I caught up—

*Interjection.*

**Mr Helwig:** I'm sure you'd enjoy it. When I caught up with the story, the board was actually trying to confiscate all copies of this manuscript to stop the individual from publishing. When we went with the story, it ended up being picked up across the country and a local newspaper published the entire manuscript word for word, so their efforts at suppressing publication went for naught.

Perhaps a more serious example is that we caught city councillors secretly voting to change the eligibility criteria for welfare, a decision that affected many people in the municipality and had the potential of seriously affecting the bottom line of the municipality. The point is that at no point was this decision ever disclosed to the public. You're aware that municipal law requires actions of a closed committee meeting to be ratified at a public session of city council, so how did they get this through



without it ever coming to public notice? It was done through a catch-all clause.

Here's the motion they presented at the public council meeting approving that decision: "That the recommendations, directions and actions of the...social services committee as set out in the minutes...be confirmed, ratified and adopted." They never released the minutes because it was a closed meeting. The public had no idea what was going on. A very significant decision was made that affected many people in the municipality, and the taxpayers were completely ignorant.

It was only through the Municipal Freedom of Information and Protection of Privacy Act and the process of investigative journalism that this fact came out. There were something like 18 or 20 stories about matters of public interest that we produced in the course of this investigation. The bottom line was that if it was contentious, it went through in a closed meeting.

I am convinced through my reading of the literature on this, my reading of the case law, that it is not limited to small communities like St Thomas. As a matter of fact, most of the case law deals with larger municipalities. It is a pervasive problem in this province, by no means limited to the city of St Thomas.

The particular strength of this piece of legislation, which I again stress is not flawless, lies in its underlying principle, that municipal governments should be generally open, with secrecy the exception that must be justified and strictly limited in law.

The Business Times fully concurs with the view that confidentiality is an important, indeed an essential, part of good government. We stress that. We're also concerned that while this legislation allows for penalties for those who violate its privacy provisions, it contains no penalties whatsoever for those who blatantly and without cause deny access to information that clearly ought to be released.

Is non-compliance a problem? I refer you to the most recent annual report from the Information and Privacy Commissioner, in which he reports that on appeal only 31% of decisions by MFIPPA heads were upheld, 29% not upheld and a further 24% only partly upheld.

Those numbers and also our own experience strongly suggest that there is an unacceptable level of non-compliance with the access provisions of this legislation. It bites solely on the side of privacy. That is where the penalties are; that is where the bureaucrats are concerned. There is no penalty for erring on a matter of access, and so I suggest to you that there's a non-compliance problem there that needs to be addressed.

The solution is simple. The Business Times calls on you to give freedom of information some teeth: Allow the commissioner discretion to impose fines for blatant withholding of public information in the most serious of cases. If our two-year investigation proved anything, it's that unnecessary secrecy is a deeply rooted, pervasive problem in Ontario municipalities. It will not be eliminated by gumming it to death.

The Business Times further asks this committee to do everything it can, as has already been mentioned, to

preserve the ability of ordinary people to use this legislation without prohibitive fees. We are fully supportive of paying our way if we are making unreasonable requests or putting civil servants through a great deal of difficulty. We support that.

On the other hand, I find increasingly, everywhere I turn, that there seems to be a tendency of government turning to information as its new source of revenue. It may be legitimate, it may be fiscally responsible, but we ask you to also remember the need of government to be open and accountable to ordinary citizens who need sometimes to access small amounts of information without prohibitive expense. With certain agencies now, I'm after one tiny piece of information and they want to sell me a \$300 annual subscription in order for me to get that, and I have a problem with that. I think it's important that we not lose sight of the need for the little guy to get access to small bits of information without breaking the bank.

As has already been mentioned as well, in view of the government's recent decision to compel disclosure of individual salaries of senior executives of publicly traded companies, the Business Times calls for amendment of subsection 14(4) to allow similar disclosure for senior public servants, at least senior public servants. In our view, the onus for disclosure by government should be equal to or greater than the onus on corporations and the private sector.

Mr Tilson, we've never met, we've never corresponded, we've never talked, but I applaud your efforts to try and get this through. It's important that there be consistency on this point. A year or so ago, frankly, it's not a point I would have pressed, because I do respect the need for privacy. But now that we're compelling the private sector to do this, I think it's important that the onus on government be at least equal to or greater.

Finally, we point out that notwithstanding the progress made by this legislation, generally the statutes of Ontario continue to allow many local institutions to cloak themselves in secrecy. So-called public hospitals, for example, are covered by neither the municipal nor the provincial freedom of information acts. They consume vast amounts of public money, yet access to their administrative records, which is all I seek—not the medical records; that's an entirely different and very complex area—is largely governed by the Corporations Act, the same legislation that governs the private sector. Why? There's a problem there.

The statutes of Ontario are a dog's breakfast of inconsistency on the issue of access to government documents and meetings. The matter of informal meetings has already been raised. That is an area of particular interest of mine, and I would volunteer to supply any member of this committee with three years of so-called caucus minutes from the city of St Thomas.

"Caucus" is an unfortunate term, because it means something completely different at the municipal level. I don't have a problem with it so much at the provincial level. It is the members of one party solely. Municipally, "caucus" is a gathering of the entire decision-making body. Provincially, it would be tantamount to the entire



Legislature meeting behind closed doors at a doughnut shop, if that were possible, and ironing out decisions. This is what happens at the municipal level. Rest assured, it does happen.

Our municipality was foolish enough to maintain minutes of these things. We've got them, under the Municipal Freedom of Information and Protection of Privacy Act, and again I'll make this offer to any member to supply you with three years' worth of the minutes of these things. The municipality's position was that they reached no decision at these things and therefore they were legal. We found repeated decisions made, recorded in their own minutes.

We believe that informal meetings—caucuses, workshops, retreats, whatever—are a very, very serious problem. One potential way of addressing that would be to simply put within the Municipal Act, wherever there's a reference to "meetings," a reference to "meetings, informal or otherwise." Our problem is not so much with two or three individuals meeting to discuss matters of public interest. Our problem is with the entire decision-making body getting together and ironing things out before it comes to public attention. That is happening. Rest assured, our investigation has documented that very well, and I encourage you to try and address that.

1520

Our bottom line: We believe at the Business Times that the time has come for a review of all Ontario statutes to make them consistent with the very commendable and useful principles of the Municipal Freedom of Information and Protection of Privacy Act. We ask you to ensure the unhindered right and responsibility of the people of Ontario to inquire into the public measures pursued in their cities, towns, villages and other municipalities.

**Mr Elston:** A very interesting presentation. I want to thank you for appearing with us today. It seems like there is a consistent request here for us to report that we should disclose public servants' salaries, that we should include hospitals and other things, so I suspect that we are probably moving ourselves at least partly towards those as recommendations. But I'd be interested in the hospital issue, because hospitals actually were to become part of this bill until there was an undertaking from the Ministry of Health that there would be a separate bill to cover access.

While you have spoken about the dichotomy of areas for inquiry, one for medical records and the second purely administrative, in some cases some of the administrative records that you may be seeking could be construed as partly dealing with medical information in the sense of the use of equipment and how it's used, the role of the people behind the use of the equipment as an administrative factor. Have you thought your way through how we might make a provision that would sever reasonably or logically those two parts of the hospital's records?

**Mr Helwig:** A big start, I think, would be to sever the board of governance that governs its documents. We found that one way of obtaining access within the city of St Thomas was to buy a membership in this particular board, which provided under its procedural bylaws an additional amount of access.

I've gone through a fair number of their minutes and records, the sort of thing I was seeking, and found very, very little of the sort that you were referring to. That medical information that might be confidential as personal, private medical information simply does not go to that level, to the board of governors. That might be a good way of starting somehow to sever the board of governors and insist that there be accountability there.

**Mr Elston:** Even with the chief medical person reporting to the board, there was very little, if any, personal information?

**Mr Helwig:** There was a medical advisory committee, and I don't recall the degree to which I got access to its materials. I was more interested, frankly, from my standpoint initially, in simply getting access to the governance—

**Mr Elston:** And the manner of expenditure and the money issues, inside allocations and otherwise?

**Mr Helwig:** Yes.

**Mr Elston:** I think it's an important step. Have you thought about universities at all, being that you're relatively close to a large university in London? It is also one of the places that has been recommended for coverage by both Mr Charlton and Mr Wright as earlier presenters. Had you thought about that one at all?

**Mr Helwig:** That's one area I haven't worked on yet, but I certainly concur there are massive amounts of public funding going into that.

Again, I think the statutes need to be gone through entirely. There are all sorts of little cracks. One that we found in our municipality was the economic development corporation. It functioned as a virtual department of the city. It was so tight that when the mayor's secretary was gone, this department's secretary picked up the phone and answered for the mayor, and yet they claim to be exempt under municipal freedom of information because of their board structure.

**Mr Elston:** So you would recommend that perhaps we should check the definition of the organizations covered under this to ensure that that second level of local government, the economic development corporation or whatever they might be called, are covered by this? You haven't said that specifically, but I suspect—

**Mr Helwig:** We're asking for a sweeping review of all provincial legislation that deals with institutions and access to documents and access to meetings, to bring it into consistency with the principles here.

**Mr Elston:** So would that result in any type of organization that would report to a public council that might have an influence on a public decision, or what decision ought to have been public at any rate?

**Mr Helwig:** There's a fine line there. There are many organizations that deal with municipalities and that receive funding from municipalities, and I'm not exactly sure where to draw the line in every case. I am aware of numerous institutions that are—I gave you one example, a virtual department of the municipality that's in city hall and functions as a department within the city and yet claims administratively that it's not. Things like that need to be clarified.



**Mr Elston:** If it looks like, sounds like and is located like, it ought to be treated like part of the council. Thank you.

**Mr Tilson:** I was interested specifically—sometimes you were referring to notes and sometimes you weren't. Do you have any notes that you could give us?

**Mr Helwig:** I apologize for not bringing full copies, but I can supply the committee with at least one copy of what I've got.

**Mr Tilson:** I do appreciate many of your remarks, specifically the two remarks on the problem of revealing—I've asked this question of some of the people who have been before us so far, having had some experience in municipal council.

You get in there, you go into private session generally for general words and then you're there and someone starts talking about something. You have a choice: You can blab to the media and run the wrath of your fellow councillors. That seems to be all that's at risk, because no one's going to talk.

If some council's foolish enough to write it all down—the council that I was in certainly didn't, and I haven't heard of many others that did. It's remarkable that you found what you did. But your comments about penalties are certainly worthwhile and I think something that the committee should look at.

I gather what you're also saying is that perhaps we should have a look at what "meetings" mean, informal or otherwise. I enjoyed those words and perhaps we should look at that.

But I can't resist, when a member of the media comes forward to talk, getting your thoughts specifically on the subject of court actions. There seem to be more and more situations. This is probably off the topic a little bit, Mr Chairman, but the speaker did refer specifically to all institutions.

The comments from you in your capacity as a medium where the courts are more and more excluding members of the public or the media from reporting on specific cases—there's an obvious one that comes to mind, and I don't know whether it's appropriate to discuss that here, but perhaps in general terms you could give your thoughts from the media's point of view or just from your own personal point of view as to how far the courts are going.

**Mr Helwig:** I have had some experiences along that line, not specifically with bans on publication, and I can advise the committee that there are problems at the bureaucratic level with obtaining access to simple house-keeping records. There is caselaw up to the Supreme Court level that provides journalists with access to housekeeping court records. We're allowed to see certain information in criminal cases, and I can tell you that I've had to threaten court officials with court action in order to get bureaucrats to supply the information.

Ultimately I have been successful, but I think my experiences that way have indicated a very strong need for training within the bureaucracy and not just in the courts in terms of information access, that the public in many cases does have a right to access information and

it is important that the bureaucrats who are dealing with the public understand exactly what those limitations are so that they can make intelligent decisions. Some of the decisions I have encountered have been absolutely bonehead decisions.

**Mr Tilson:** I'm not so much thinking about having access to court records. I defy any court official not to allow anyone to have access to court records. I'm looking specifically, on the issue of reporting of decisions, as to how far the line of cases seems to be moving. The obvious case is the St Catharines case, whether there should be legislation from a provincial or federal jurisdiction that deals with that subject.

**Mr Helwig:** The issue generally being that of bans on publication, you mean?

**Mr Tilson:** Yes.

*Interjection.*

**Mr Tilson:** Well, I qualified my remarks. The fact of the matter is that the speaker has referred specifically to going on all institutions across our province. It seems to me one of those institutions is the subject of the courts, so hopefully you'll allow me to pursue that.

1530

**The Chair:** You haven't got much time, about 30 seconds to get a reply.

**Mr Tilson:** Well, 30 seconds to a great answer.

**Mr Helwig:** I didn't come prepared to discuss that at all, but I do concur with those who feel that the status quo is indicating a very serious problem within the province of Ontario. The particular case to which Mr Tilson is referring—it's simply not acceptable the way it is. The whole issue needs to be looked at.

**The Chair:** Mr White, Mr Cooper and Mr Hayes.

**Mr White:** You should tell me when my time is up.

**The Chair:** You've got five minutes to share with your colleagues.

**Mr White:** First of all, if I could, as quickly as possible, get from you a couple of comments here. Mr Helwig, I was very impressed with your comments. Here you were dealing with the Municipal Freedom of Information and Protection of Privacy Act and yet there was a large amount of information that was being withheld from a public body. You're suggesting that the freedom of information and privacy provisions should include a number of other public institutions such as hospitals and universities, which are publicly funded. You're suggesting they should be dealt with as public institutions just as municipalities and the provincial government is and not as private corporations, correct?

**Mr Helwig:** Based on the amount of public funding they receive.

**Mr White:** You're also suggesting there should be a proactive approach in a sense that if there is to be information which is withheld, where people's rights are being impinged upon, there should be a straightforward declaration of that, a prior rationale for why a closed session should be occurring.

**Mr Helwig:** I'm not sure I've considered that or that's what I'm recommending.



**Mr White:** But what you are saying is that issues of confidentiality were used as the excuse for a private meeting, but were not effectively the actual reasons.

**Mr Helwig:** Yes.

**Mr Mike Cooper (Kitchener-Wilmot):** I read through the original review of the freedom of information and protection of privacy. At that time it was stated that legislation should have built-in allowances so that legislation is reviewed. That's why we're here today, because it's built into the legislation and we have to review it. This would be a good thing, because if you look at what we're doing presently, some of the legislation we've been dealing with in the past couple of years has been basically not touched in 15 or 20 years and it's so outdated, substantially changed.

These are some of the things we've done. We have to admit that the reason for this legislation was the fear, because of the technological advances about protection of privacy and with the review built in then you can start working on what we can loosen up and allow. But there are still more people who are asking for a greater protection. I know you'll have the police coming forward and making their comments about what should be released to the media, especially on the rights of victims and whether that should be loosened up or tightened up.

This is a perspective I'd like you to address. Should this be loosened up so the media have total access and then you forget about the rights of the victims or should it be tightened up so they're more protected?

**Mr Helwig:** It's not a question I've given a lot of thought to, particularly now that I'm involved with more of a business publication which does not often deal itself with the sort of criminal matters that—I just don't think that's the sort of thing I can give you an intelligent opinion on on the spot.

**Mr Cooper:** But you can understand where, with the piece of legislation, by having the review you can either tighten up or loosen up. If that's built into most legislation, that would address a lot of the concerns.

**Mr Hayes:** Are you familiar with the Sewell report dealing with open local governments?

**Mr Helwig:** Not as well as I should be. I'm familiar with some of the provisions, yes.

**Mr Hayes:** Maybe you haven't read too much of it, but some of these issues about council meetings are actually being addressed and will be addressed in that particular report and legislation to follow. I just wanted to get your opinion as to whether you felt that would actually complement the freedom of information act or whether it wouldn't, I guess.

**Mr Helwig:** I wasn't aware that the Sewell report impacted on the issues I'm referring to—

**Mr Hayes:** It does deal with the municipalities.

**Mr Helwig:** —so I can't express an opinion on that.

**Mr Hayes:** I see. How long have you been having these problems trying to get information from the municipalities?

**Mr Helwig:** Very shortly after the act came into effect, it became an interest to me.

**The Chair:** Mr Helwig, thank you for taking the time to come with the information that you have given us on different aspects of the act.

#### REGIONAL MUNICIPALITY OF PEEL

**The Chair:** That the next group is from the regional municipality of Peel.

**Ms Deborah Trouten:** I'm going to be making the presentation. My name is Deborah Trouten, I'm the regional clerk, and I have two people with me whom I will introduce.

Mr Chairman and members of the committee, good afternoon and thank you for this opportunity to provide our feedback on the Municipal Freedom of Information and Protection of Privacy Act, which we affectionately refer to as MFIPPA. You'll hear me say that a fair amount: FIPPA or MFIPPA.

My name is Deborah Trouten. I'm the regional clerk and director of administration for the region of Peel. We are here in our role as administrators of the legislation on behalf of the region. With me are Michael Proudlock, who acts as our deputy clerk, and Robert Candy, who is the supervisor of corporate records and our MFIPPA coordinator for the region.

The submissions we are presenting today are the result of a staff review of this act. Many of the recommendations we are making today have been dealt with by our council but not in a formal, concise mechanism. Many of the observations are from a staff point of view. I am the delegated authority to administer the act for the region, so I speak with some experience in administering the act.

I think it's fair to say that during the three years that this act has been in force it has increased access to government records and privacy of personal information. However, achieving these purposes requires the allocation of public funds at a time when the public is demanding better service at a lower cost. The objective of our submission is to identify ways in which the act can achieve its main purpose at a lower cost to the public and with greater efficiency.

We have five main recommendations and I'll conclude my remarks with some comments on the provincial act governing the same issue.

Our first recommendation relates to the requirement for a directory of records and personal information banks. The research, maintenance and duplication and printing costs of these publications are expensive. Perhaps the most costly requirement is that of identifying the legal authority for each collection of personal information, which involves many hours of legal research and advice.

As most municipal services are mandated by provincial legislation, municipalities retain very similar records across the province, with the main differences being between the upper and the lower levels of municipalities. This results in every municipality reinventing the wheel at tremendous cost to the taxpayer. By contrast, here at the province, Management Board maintains the directory and index for ministries, colleges and other provincial institutions.

We believe that the same service could be provided to municipalities and local boards covered by MFIPPA and



we recommend that Management Board be responsible for publishing a province-wide directory of municipal records with the assistance and cooperation of municipal institutions. As municipal institutions can readily supply information for such a directory, it would be, in our view, a simple and cost-effective joint effort.

Our second recommendation is for more routine access to information. The act does not contain any provision to encourage municipal institutions to provide access to information to the public on a routine basis, outside of making a request under the act. As municipalities are subject to the direction of the province with regard to their powers and duties, this results in unnecessary caution about releasing information to the public that should be routinely provided.

Some municipalities have interpreted this lack of a routine access provision to mean that all requests for information from the public must be made under the procedures of the act, despite the act's principle that information should be made available to the public. Requiring the public to request information under the act rather than providing routine access is not an efficient way of conducting business. It's more expensive to administer and results in delays to the public.

#### 1540

The act contains some provisions intended to provide routine access to information, but in our view they do not go far enough.

Section 50 refers to access in response to oral questions but does not define what procedures should be used. This section also preserves access to general information that was available before 1991 but does not recognize practices established after 1991 explicitly. Section 50 also excludes routine access to personal information even to the individual to whom it relates. Members of the public are often required to make a request under the act for their own personal information despite the right of access.

Section 27 refers to maintaining a record of personal information "that is available to the general public," but does not authorize municipalities to create such public records or offer any criteria for determining what should be public.

We recommend that changes be made to section 50 to include routine access practices after 1991 as well as routine access to personal information by individuals to whom the information pertains.

We also recommend that a new routine access provision be added permitting and encouraging municipal institutions to disclose records more readily and efficiently.

Our third recommendation relates to access to personal information by elected officials on behalf of their constituents. Our Peel representatives on this committee will be very familiar with this issue.

Section 32 outlines the rules for disclosing personal information and is almost identical to section 42 of the provincial act. The key difference is in access to personal information by elected officials. Clause 42(j) of the provincial act allows personal information to be provided to a member of the provincial Parliament who is author-

ized by a constituent to make an inquiry on that constituent's behalf.

This same provision is missing from the municipal version of the act and, as a result, elected officials including yourselves as members of the provincial Parliament, as well as municipal councillors, are not afforded an equal right to obtain information on behalf of constituents. This results in delays in responding to inquiries from constituents, while we as municipal staff obtain consent directly from the constituent.

We recommend that section 32 be amended to add the same rule found in clause 42(j) of the provincial act in the interests of fairness, consistency and efficiency.

We also suggest that privacy be enhanced by requiring that any personal information disclosed is relevant to the inquiry.

We also have concerns with the notice-of-collection requirement. Section 29 requires that institutions notify individuals when collecting personal information of their legal authority, the purpose and the name or position of an employee who can answer their questions about the right to collect the information.

Most of the information provided in this notice of collection is already available in the index of personal information banks. Providing a notice to individuals at the point of collection is therefore a duplicative effort in our view, resulting in additional costs in redesigning and printing forms, employment advertisements and other such collection mechanisms.

In our experience over the past three years, the public has never inquired about the notices of collection which have been placed on all of our regional forms and advertisements. In our municipality alone, we have in excess of 3,000 forms, so you can imagine the effort, the labour and the cost of making those changes. A more efficient approach would be for institutions to have this information available in the index of personal information banks at the request of the interested individuals, eliminating the additional unnecessary expense.

We recommend that section 29 be amended so that the notice is provided on request and that the matters covered in section 29 be included in the index of personal information banks therefor.

As you know, the field of access and privacy is changing rapidly with the continuous development of new and pervasive systems technologies that will have a radical effect on information issues. In order to monitor the effectiveness of this and the provincial act and to continue its improvement to deal with these changes, we believe that this committee should review the act's operation every three years and consider comments from all interested parties. In fact we recommend that both acts be amended to require further reviews every three years due to rapidly changing technologies.

In 1991 the standing committee on the Legislative Assembly reported on its review of the provincial version of this act. Because many of the amendments to the provincial act may also result in amendments to the municipal act, we offer the following comments on that report.



Let me say at the outset that we support most of the recommendations in the report and we are highlighting here only those which we especially support or oppose.

We support recommendations to simplify the rules for disclosure of personal information. We also recommend that consideration be given to combining section 14 of the municipal act with section 39, to create one set of rules for disclosure of personal information—presently we have to rely on two sections within the same act—with clear examples of records that should and should not be released.

The rules for disclosure of personal information are extremely complex. To add to the confusion, there are two sets of rules for disclosing personal information, with ample room for conflict and misunderstanding between them. This is difficult to administer from our point of view, it's difficult for the public and other employees to understand and results in too many decisions about disclosure of personal information being referred to specialists in the legislation, at greater cost and delay to the public.

We oppose recommendations to require written consent to disclose personal information and to prevent consent-to-release forms. Currently institutions can rely on the consent of an individual, obtained orally or in writing. Eliminating the option of oral consent to disclosure will result in greater delays to the public in obtaining access to information. I'm sure all of you can identify that as advocates on behalf of your constituents.

There are many cases where a client is not able to provide written consent, for a variety of reasons, or where the urgency of receiving the information makes waiting for written consent unacceptable to the client. Sometimes clients prefer to work through advocates—either yourselves, friends or family members—and they expect to do business over the phone today without delay. Insisting on written consent for all such inquiries would be poor customer service and would not be welcomed by the public, in our view.

Consent-to-release forms have their legitimate uses in many programs, such as housing placement or social services, where staff must make a number of inquiries of agencies over a period of time to verify information provided by clients and place clients with other agencies. Banning the use of such consent forms would mean that written consent of the client would have to be obtained for every single contact with another agency on the client's behalf. We believe the public would view that as being overly bureaucratic.

In its place, we recommend a different option be considered by yourselves, and that is that consent to disclosure be obtained at the time the personal information is collected and that a definite time period or expiry period be established, such as six months, upon which point it would be renewed. This would be a practical solution to address any privacy concerns over open-ended consent-to-release forms.

We oppose recommendations to require institutions to consider all reasonable alternatives to proposed uses or disclosures of personal information without consent. The gist there is that we would have to go for the personal

consent first as an option.

Sections 31 and 32 of our act, 41 and 42 of the provincial act, outline the restrictions on the use of disclosure of personal information. All such uses and disclosures are legitimate and proper; otherwise they wouldn't have been included in the act by the authors. Requiring institutions to favour obtaining consent over all other legitimate options, in our view, is unreasonable and again would result in more administrative costs.

We oppose recommendations to define municipal social service departments as separate institutions and to designate employees who have a need to know about social assistance recipients. These recommendations, in our view, are related to a court case in which a municipal council sought to obtain county welfare rolls, which was going on at the time of the 1991 report and was resolved in 1992 by the courts.

Legislating that a municipal department be considered separately from the rest of the municipality could interfere significantly with local accountability. It would also raise the question of who would serve as the head of the social services department for the purposes of the act. Replacing council as the head, for example, could weaken the accountability of council to the public for providing welfare services at the local level.

This recommendation would also impose additional administrative costs on the welfare system by requiring each municipal social service department to have its own MFIPPA staff rather than using municipal MFIPPA staff.

The need-to-know recommendation for social services would require greater protection for information about social assistance recipients than for information about other members of the public, such as medical or employment information. By requiring special protection of social assistance information, other sensitive information might receive lesser protection.

Restrictions on internal use of social assistance information, particularly when combined with the designation of social service departments as separate institutions, may also impair the ability of municipalities to verify eligibility, audit social service programs, prepare cases for courts and tribunals, detect fraud and conduct other proper business.

We support recommendations allowing the commissioner to extend the appeal period in special circumstances, provided that the extended time period is limited to a reasonable time frame, such as a further 90 days. The time should be limited, in our view, so that institutions are not left on the hook, as it were, about whether or not an appeal might arise at some indefinite point in the future.

Institutions often must compile large volumes of documentation to respond to requests, and the costs of storing and retaining these documents for an indefinite period of time, in the case of an appeal, would soon become overwhelming. Appeals, in our view, should be resolved efficiently and in the shortest period of time for all parties concerned.

We support the recommendation to apply fees to personal information where requests involve extensive



searches. We also recommend that fees be chargeable for copies of personal information.

#### 1550

Currently the act prevents municipalities from charging any fee for access to personal information. The Information and Privacy Commissioner has commented that the legislative intention to include a user-pay principle in the act is clear. We believe it is reasonable for the public to expect basic fees for access to records, whether the records are general or personal.

Until 1991 municipalities were permitted to charge for copies of records by passing a bylaw under the Municipal Act, a right which was taken away from us. This legitimate cost-recovery practice was banned by the act with respect to personal information. In situations of genuine hardship and inability to pay the fees, the act provides that the fees can be waived. This eliminates, in our view, any barriers to access created by imposing fees on personal information.

We support recommendations that requesters of information to be used for commercial purposes be required to pay the full costs associated with such requests. Businesses in our experience now use the low fee scale of the act to gain access to mailing lists and other commercial information that would cost them considerably more to compile themselves. The act is intended to provide information so that the public can be better informed about government activities, not to provide inexpensive marketing information to be used against business competitors.

We support the recommendation from the Archives of Ontario that general records in the archives be made available to the public after 20 years and personal information after 100 years. We recommend that this rule apply to municipal archives as well. This recommendation would improve access by the public to government records held in municipal archives. It would also simplify the administration of the act for municipal archives and reduce costs through setting precise time periods for public release of archival records.

Another archival concern is whether the act applies to records transferred from other institutions, such as boards of education, area municipalities and police services boards, or I might add, children's aid societies. Our archive service in Peel is the repository for records from all of these institutions.

The provincial act applies to records placed in the Archives of Ontario by other institutions while the municipal version only applies to records placed by the institution which operates the archives. As a result, records received from other institutions may not be covered. We recommend that the act be clarified to address this ambiguity.

We support recommendations permitting institutions to disregard frivolous and vexatious requests. There have been many instances where municipalities and local boards have been requested to provide information by individuals who have made it public knowledge that they are abusing the act. The time spent in responding to such requests, as required by the act, in calculating fee esti-

mates, locating documents and resolving appeals is a waste of scarce public resources.

We oppose recommendations requiring institutions to publish in advance of any request being made and on a periodic basis a list of all studies and policy documents that are available to the public. This new requirement would impose an additional cost burden on institutions to research and prepare this list. We believe that the additional cost to generate such lists for every provincial and municipal institution across Ontario would in a time of fiscal restraint be unacceptable to taxpayers.

In conclusion, we wish to emphasize that the act is positive legislation with benefits in opening access to government information and enhancing privacy. Its disadvantages in our view are its many complex rules and regulations which are often difficult for us to administer and for the public to understand. They all too often result in increasing the cost of government instead of reducing the cost of government.

All too often as well this has resulted in a chilling effect in terms of getting the public to utilize the act. Where municipal staff were once willing to provide access to information to the public routinely, many are now overly cautious about releasing documents. This causes delays and understandable frustration to the public as well as a higher cost in processing requests formally.

We believe then that the solution to this dilemma is to simplify the rules in the act to achieve the greatest efficiency at the lowest cost to the public while preserving fairness. The focus of any reforms to the legislation should be on fulfilling the main purposes of this act through making it simpler and with fewer administrative requirements. Imposing additional administrative requirements which are not central to the act's purpose should be avoided, because they will impose additional costs to the public.

We believe that the recommendations offered in this submission will help to make the act more efficient and effective for us to administer, and we would be pleased at Peel to offer our assistance in developing these and other recommendations further. I thank you for your attention.

**The Chair:** We have three minutes per caucus.

**Mr Tilson:** One comment you made is that you're opposing the publication, in advance of any request being made and on a periodic basis, of a list of all studies and policy documents that are available to the public. You say the taxpayer won't like that because it will be costly. How would providing a list be costly?

**Ms Trouten:** The time spent gathering the information, searching through all the departments about proposed policy documents that are underdeveloped, I think you have to realize—

**Mr Tilson:** Wouldn't all that be on a machine?

**Ms Trouten:** Not necessarily, if it's under development. I think it's important to realize—I know you've heard from other representatives of municipalities that a large portion of our business is dealt with in public. Our in camera session at the region of Peel complies specifically with the MFIPPA legislation. As a result, all of



these policy documents and papers are public anyway. To add an extra step of having to list them in a separate document in our view is wasteful.

**Mr Tilson:** So you're saying it's simply impossible to provide that without a great cost, because—my voice is gone. Are you telling me this is not on a word processor or some computer, where all of this information could be made available?

**Ms Trouten:** It's not impossible to provide it. What it does is add an additional step to something that's already available through the public documents of council agendas or is available over the counter from the individual department. It's not impossible it is on a word processor, but it's not in the format that the recommendation is recommending.

**Mr Tilson:** What does it cost to administer the freedom of information legislation in the region of Peel annually?

**Ms Trouten:** Roughly \$40,000 at the region of Peel.

**Mr Tilson:** With what you're proposing, what will the cost be?

**Mr Robert Candy:** We haven't calculated any specific cost reductions based on this proposal, but some of the main costs that would be reduced would be printing costs. There's a lot of printing costs in terms of forms and reports and things like that, in terms of the notice of collection. That would certainly save many thousands of dollars.

The key thing would be staff time. Staff time is paid by the public and the requirement to go through a lot of these administrative loopholes which provide access to the public is costly. If we could reduce some of the requirements, then that'll clearly reduce costs.

**Mr Wiseman:** Just to carry on from what my colleague asked earlier, what part and time of the day are most of the meetings held at the region of Durham?

**Ms Trouten:** The region of Peel.

**Mr Wiseman:** Peel, sorry. I come from Durham. It just slips.

**Ms Trouten:** Our meetings are held during the day, but let me go on in answering that question to point out that there are many ways to communicate with the public other than a council meeting. In our own jurisdiction, we have a policy of public consultation on most of what we do. We provide publications after the meeting with regard to the decisions. We have a section on the agenda for the public to ask questions for delegates to appear.

When we're dealing particularly with issues that have a wide public interest, council has, on several occasions, held a special meeting in the evening. Many of the issues we're dealing with are largely routine and we do consult widely on these issues. So the timing of the council meeting is not the only issue that this committee should look at when addressing.

I don't believe this legislation is the place to address openness of council meetings. There was a draft piece of legislation—I believe it was called open local government bill—which addressed these issues. I would suggest that the committee or this government look at the appropriate

piece of legislation to address openness of council meetings and what is held in camera and what is not.

**Mr Wiseman:** I just want to get a quick question in. In terms of the publications and the information that you do provide, do you charge for them and what is the range of cost?

**Ms Trouten:** I can't say categorically. I'm going to defer that one to Rob.

**Mr Candy:** In terms of publications, if people make a request under the legislation, we provide them with the fees for photocopying under the legislation. For copies of most publications, they're available to the public. There's very little cost. A lot of things are provided at no cost by our communications services.

**Mr Wiseman:** Does Peel have an official plan?

**Ms Trouten:** No, we do not have an official plan. We're 20 years old this year and we're working on our official plan. Soon. Our goal is September. I think we're the last of the regions to have an official plan.

**Mr Elston:** A couple of points: I was just interested in the province-wide directory for municipalities. I come from Bruce county, which is slightly smaller than Peel and probably doesn't have the same list of records available. I was kind of wondering if there was a practical way of making sure that a province-wide listing would be reasonably interpreted by someone in Mississauga or Peel and someone in Warton, for instance, because you might have an expectation that if they can get it in Peel, then, by God, you should get it in Bruce.

1600

**Ms Trouten:** I'm not as familiar with Bruce county as I am with the region of Peel and some of the regions in the greater Toronto area, but I think if you looked at the services delivered at the county and at the local level, a lot of the same services are provided at either level. What we're proposing is to look at those common records or collections of records that would be held.

Because of the nature of the services that are delivered at the municipal level, there will perhaps be sections of that directory that are unique to Peel or unique to Bruce county, but by and large, because our services are delegated by the province, there is some consistency in terms of the level and the types of services that are provided by municipalities, be they upper or lower tier.

**Mr Elston:** Some of the other presenters have spoken to us about listing the salaries of employees of municipalities and otherwise. I know you've heard the presentations. Have you had much discussion around the issue in Peel? If you have, fine; I would like your comments. If not, it's fine as well.

**Ms Trouten:** I feel almost as if I should declare a conflict of interest as a civil servant who feels it's personal information. Certainly what's available in our municipality, and I can only speak to our municipality, is a range for the position, largely because people move through that range based on their personal performance. We have had, to date, a personal performance review, and that is conducted by our superior. In my case, I report directly to the chief administrative officer and to the



council as a whole in my role as clerk.

We haven't formally as council had much discussion. We do make the ranges available and the policy by which people receive increases. To that extent, that's about all I could say on the matter. We haven't had a discussion or compared it to private sector organizations and what we'll do. We do make the ranges available.

**Mr Elston:** Just one last question perhaps: Could you tell us some of the inquiries you have had for freedom of information, how many you have complied with, how many you have refused or partially refused and then how many fees you've collected, really just the statistics?

**Ms Trouten:** I'll have Rob answer that.

**Mr Candy:** What we've been trying to do over the past year particularly is increase the routine access provisions within the municipality, so our actual formal request rate has declined quite a bit. It was only at 49 last year. Prior to that, it was about 80 in 1992. We haven't had any appeals of any of our decisions.

We have refused access on some occasions, particularly when it comes to personal privacy. I think people understand that. We're fairly upfront with our reasons, so people understand the reasons we're exempting access. I think the fact that we have an appeal-free record is proof that the act seems to be working. People are satisfied with what we're doing.

**The Chair:** Time has expired and I'd like to thank you for coming before this committee today.

#### OPS BLIND AND VISION IMPAIRED ISSUES WORKING GROUP

**The Chair:** Mr John Rae, welcome. OPS stands for Ontario public service, or am I wrong?

**Mr John Rae:** It does indeed; you are quite correct.

Thank you very much, Mr Chairman and members of the committee, for the opportunity to come before you. I appear on behalf of the OPS Blind and Vision Impaired Issues Working Group. You may be a bit surprised at a group such as ours wanting to address you. I think our reasons will become evident as I make what will be for me an uncharacteristically brief presentation.

Our group was established in 1992, and we are, as our group's name implies, a network of blind and vision-impaired individuals who do work in various ministries, boards and commissions within the Ontario public service. Our group meets about every six weeks and since our inception has discussed about 30 issues. These include accessing necessary technology, who gets training, space, the effectiveness or lack thereof of the government's employment equity program and a myriad of other issues.

Of greatest concern to us so far has been the issue of gaining access to information in a form that we can directly use. Most documents, as you know, Mr Chairman, are produced today only in printed format. When I say we are looking for access to documents in a form we can use, I refer to formats such as Braille, large print, computer diskette and audio cassette, and I mean being able to access a document at the same time in my preferred alternative format as you access that document in your preferred format, namely, print.

With that background in mind, we have asked for this time in order to discuss one specific aspect of your act, namely, subsection 37(3), which speaks to the provision of information "in a comprehensible form." After the many years I've been involved in fighting to gain access to documents in alternative formats, I have a little difficulty getting my tongue around this term "comprehensible form." It's a little new to me.

Just to review, the section says: "If access to" private "information is to be given, the head shall ensure that the" private "information" be "provided to the individual in a comprehensible form and in a manner that indicates the general conditions under which the" private "information is stored and used."

I think today the right for those of us who require alternative formats to obtain our information in alternative formats is becoming increasingly recognized, but I also think it's fair to say that we have a long, long way to go. The federal and provincial governments are currently becoming increasingly active in responding to what we believe are their legislative requirements to provide access in a person's preferred format.

If you look at section 17 of the Human Rights Code, it speaks to the whole concept of accommodating a person's needs short of undue hardship. What we are coming before you to ask is that this act be amended to clarify a person's right to receive information in one's preferred format.

1610

I would ask you, Mr Chairman, if I can give you this to read into the record, please, section 12(3); this is from federal legislation, which I believe is directly germane to the issue that we are raising.

**Mr Hope:** It's on page 22 of the report this morning that the commissioner provided.

**The Chair:** Okay, section 12(3) of the federal Access to Information Act provides:

"Where access to a record or part thereof is to be given under this act and the person to whom access is to be given has a sensory disability and requests that access be given in an alternative format, a copy of the record or part thereof shall be given to the person in an alternative format."

Did you want me to read the whole act or was that the main part?

**Mr John Rae:** That's the main point I want to refer to, thank you. I believe that provision would be an adequate wording when you come to legislative drafting of amendments to the municipal act. You may want to consider other wording, but I think that wording we've tabled here would be an excellent guide.

Let me comment on just a couple of other matters, because that one is our primary recommendation we want to make.

In terms of municipal documents—and I gather there is some debate before this body as to how far this committee should consider other kinds of municipal documents—we think there is a chronic need for municipalities to develop plans for providing documents, bylaws, reports, to the vision-impaired community and at



the same time as they're released in the print format.

I think both the federal and provincial governments are making significant progress in responding to their responsibilities. I think municipalities as a whole are way behind.

Finally, the issue of fees, obviously a difficult matter in these times of constraint. I guess the point we would want to make is that if fees are going to be instituted, and fees for a group such as ours which tends to subsist within the lower socioeconomic levels are clearly a problem, fees for providing alternative formats must never exceed those for providing the print alternative, even if the costs incurred by the municipality to do so are somewhat higher.

In conclusion, I think the legal requirement is clear. The Ontario Human Rights Code is very clear on the issue of accommodation. The Ontario Human Rights Code has primacy. I urge that you recommend this change to the municipal act, which we hope, as citizens of this province, will affect our lives at the municipal level. I think bringing about the changes we propose municipally might very well act as a good lever for further amendments to the provincial act. Thank you. I'd be happy to respond to any questions you may have.

**Mr Hope:** Thank you very much. I've had the extreme pleasure of working with Dick Santos as my executive assistant before his moving on to his job that he is in today, and it was a change of my life too when I was working with Dick.

One of the issues that I wanted to raise is that you talk about alternative formats, using tape. Would it be that requesting tape or audio-visual or audio and also paperwork to follow, or would it be just one or the other? The question would be, as you're doing research or whatever, for whatever purpose, the information is required as a backup, some type of backup to verify, whether that be through a reader or whatever else you might have available to your services. I'm just wondering, is it one or is it supplying both, the audio aspect or also print form?

**Mr John Rae:** Each of us who must deal with that cursed matter of print has his own approach. Some of us feel that being encumbered with the printed equivalent is just a nuisance that is only going to get in the way of our lives. Some of us will be able to read some amount of print and might want the alternative format to make their research simpler.

Many of us use a combination of methods for accessing print. I myself am a Braille user, as you've seen. I generally prefer audiotape except when it's a complicated document like a statute or perhaps a part of a personal record. I might prefer to have it in Braille. I also use the services of a personal reader and make my own notes in Braille from that. So I use a combination in order to be able to use the document in pursuing whatever issue I might be pursuing.

I suspect that you might get a request for the print equivalent as well, because if I have only the Braille version, and I say, "Now, if you would like to turn to page 23," that's not going to do you a lot of good, right?

**Mr Hope:** Right.

**Mr John Rae:** So in order really to function in what we recognize as a very print-oriented world, I might very well request both. It's very much an individual preference, the way each person approaches gaining access to print material.

**Mr Hope:** The only reason I raised the question is because if we were to go through this process and clean it up, if we only said one or the other, it would create difficulty for individuals.

I heard you talk earlier about the fee aspect. Maybe the one might be free and the other might be at a cost, whatever is decided. I just wanted to make sure that when we look at this approach we look at an approach that we could probably—somebody who would request either audio or another source, to provide the information, it could be more than one copy?

1620

**Mr John Rae:** The good news in all of this consideration is that I doubt that any one municipality, or the provincial government for that matter, is likely to be inundated at any one point in time by such requests. So I submit that the cost factor in terms of providing even both a print version and an alternative format version in most instances will not be excessive.

**Mr Elston:** Just to follow up on Mr Hope, in terms of production of Braille as the format, I'm thinking about someone who is asking for a substantial report. I would think that for someone like you, who has indicated a preference for Braille, you would probably want the report in Braille as opposed to having an audio tape of somebody reading through that for you, or something. I wonder, how does a municipality or any institution prepare itself for a request from someone who may request in an alternative format, or whether or not we should be providing extended time for answering or replying to the request.

**Mr John Rae:** If you're speaking about the availability of reports and that sort of thing which one requires as a citizen, as all of you know, better than most of us, when a report is released, the media and the public debate on such a new report will focus the day it's released, maybe the second day, and maybe, if you've really got a hot issue, the weekend newspaper might follow up. That's why I really referred in my comments to the need for simultaneous production.

We aren't suggesting that either a municipality or the provincial government automatically make available each and every document that it puts out. I think what would be useful and what we would recommend is that municipalities put together a committee of users in the community to go over what kinds of documents are routinely produced by the municipality. I think that group would identify a number that probably ought to be made available routinely, things like reports that cover people with disabilities. I would suggest things like official plans, critical documents. Then there would be those other documents, namely, the rest, which would be made available upon request.

I think there needs to be an onus upon the municipality



to take some proactive steps, because part of our problem is that it's difficult for us to ask for a report if we don't know it's there. If it's a document that receives fairly minimal coverage in the media, I very well may not know that it happens. I really think that municipalities, especially major municipalities, should be developing a committee and developing a plan, because at the moment we are shut out of that initial public discussion, and I think that violates our human rights.

The only recourse that we really have at the moment in terms of getting some of this material made available, and it's made available at some point down the road, is really to file a complaint with the Human Rights Commission. I must say that filing a complaint with the Human Rights Commission does get people to sit up and take notice, but I would really rather not do that. I would prefer to spend my time and energy as a citizen working with a community or even with the association of municipalities to try to develop some standards to help them so that we can be brought into the mainstream debate at a much earlier time in the process.

**Mr Elston:** So you're really suggesting what I might describe as sort of base documents for municipal work, perhaps budgets, official plans. A good example here might be the index to documents available for freedom of information, I presume, so that you actually know what is available or might be available from the municipality.

**Mr John Rae:** That sort of listing would be a wind-fall for us, especially if we had that in an alternative format, because then really the world of information would very much open up to us because, as I said earlier, it's hard to know what to ask for if you don't know it's there.

I should make one other point in this context. People will say that some of the documents that get produced, like official plans, are long and thick and fat. I know that too. Write shorter, more concise documents, is my response to that. I think we would all benefit from the use of plain language and more concise writing.

**Mr Tilson:** I'm interested in some of your remarks, specifically one of your last remarks, when you said it's difficult to know if a report is even there. I understand that, and of course the last delegation which was here from Peel commented on the difficulty of the cost, listing off documents, whatever they may be, reports or otherwise, that are there. They indicated that the cost would be prohibitive. That's my word, that wasn't her word, but that it would be rather high.

I represent a riding which actually is the north half of the region of Peel geographically but which also includes the county of Dufferin. It has a slew of small municipalities whose budgets are rather minimal compared to the federal government, the province of Ontario.

This committee is looking at possibly expanding these pieces of legislation to other groups. I guess I look at the whole issue of whether or not your request is almost impossible financially, specifically to the groups that this committee—and we really haven't made any decisions or recommendations, but the consideration of expanding—or indeed to the small municipalities such as the ones that I represent.

**Mr John Rae:** Some of the municipalities in your area, sir, I would imagine would produce far less material. Maybe they would be a good model for the rest of us. The Human Rights Code speaks about undue hardship and when we think about undue hardship, I think of it in terms of the entire ability of the corporation or the organization or the employer or whatever to provide those accommodations. I suggest that the same test need be applied in this instance.

I don't anticipate that you're likely to be swamped with requests. I rather wish my community was a bit more active in its demand for documents in alternative formats than it is. I simply would suggest to you that the issue of cost is one that cannot be thrown up against a group that's attempting to participate equally in the life of your community, that some method has got to be found for making our access to information more equitable.

I think nowadays a lot of documents are produced in the first instance on computer disc. It's very inexpensive to make a copy of a disc. That would not satisfy my personal needs because I'm not a computer user, but a growing number of our constituency are. So there are various ways of making material accessible. I would not anticipate that you would be flooded with requests. As I said, I wish our constituency was more active than it is.

**Mr Tilson:** That leads to the second question I have and that is, it's a question that doesn't only apply to individuals such as yourself who have the difficulties that you have but to everyone, and that is the abuse of process. The Chair of the board has come forward and has given examples, as has his staff, that there are people out there who simply abuse the process. They do a whole list of freedom of information applications, for example, demanding documents.

1630

Naturally, members of the committee get into the difficulty of what is abusive process, what is frivolous, what isn't frivolous, that whole area. But notwithstanding that, I guess this question is really related to the first question as to the issue of cost and whether you have, in your request to the committee or your suggestions to the committee, canvassed that issue with your group, which not only would apply to—it would apply to everyone; in other words, the issue of the frivolous application.

**Mr John Rae:** I would submit that one ought not to tie those two issues together. I think they are separate, by which I mean there are, I gather, standards and criteria within the act that determine what is and what is not a frivolous request. I think a request from a person or a group should be dealt with in the same light. But having come to the conclusion that the request is a bona fide request based on the provisions of the act, then we come to the question of how that record or that piece of information ought to be provided.

**Mr Tilson:** My question is, before you get to that stage, whether your group has directed your attention as to how to deal with the frivolous applicant. And indeed, what does "frivolous" mean? I'm not so sure I know what "frivolous" means.



**Mr John Rae:** Specifically, no, but I assume that you have standards and provisions within the act. I think whether or not a record or a request is granted is one thing. The fact that the person asks for that document in a format they can use—I think there's an immense danger in any suggestion that would join those two issues. I think they are separate.

I think the decision of whether to provide a requester's document is one thing. Having decided that, yes, there is justification for the individual to have access to that record, after that our position is that it should just logically flow that the individual's preferred method of accessing that document should then be provided, once the decision has been made under other provisions of the act that it's a reasonable request. I would not want you to join those two issues. I think they're separate.

**The Chair:** Mr Rae, thank you for coming today, and I think you've thrown a different perspective on it.

**Mr Hayes:** Mr Chair, can I just ask a short question, please, of Mr Rae or anyone else on the committee? Do we have any idea of what the actual cost would be to translate a document into Braille? Maybe Mr Rae would know that. I'm sure you've had this done.

**Mr John Rae:** I can give you some notions about alternative formats. It depends upon the size, the complexity, the content of a document. It's easier and cheaper to translate an item which is just straight text versus one that has complicated tables and charts and graphs. For conversion into audio tape, you can either have a staff person do it or you can send it out to a supplier who will charge in the neighbourhood of \$45 per transcribed hour.

For Braille, that does get more expensive because presumably the document is probably only in print format. So the document would first have to be scanned into a computer, onto a disc, and then that disc used to produce Braille output in a somewhat similar manner to that by which you would regularly produce print output.

I think Braille output tends to be \$2 or \$3 per Braille page, but you've got to also take into account the time for converting the initial print document into an ASCII

file within a computer. I understand the process somewhat. I am not a computer expert, so I can tell you only in general terms.

Again, the test of undue hardship has to come into play, because only some people will want Braille. I think the largest number of people would prefer audio tape. But what we're saying is that if a person's preferred format is Braille, they must have that opportunity.

**The Chair:** Thank you again, Mr Rae.

Mr Hope, you have a question of the researcher?

**Mr Hope:** Yes. In this morning's presentation that was given as pages 21, 22, 23 and 24, the commissioner's report did talk about the visually impaired and access of information. I believe, and I could be mistaken, we also talked about technology and format. I'm wondering, and I guess it's more of a question to the commissioner, if he has considered, in the format or computer aspects of it, information intake, if through the technology that we have today there isn't some way of expediting the process so it does make accessibility easier and quicker and cost-effective for municipalities and others around a computer system format that might be a translator or whatever to deal with it.

I know he's done a good job, at four pages, of identifying it for us in the report. I'm just wondering, around the technological end of it, if they've looked at it in that perspective, because he has addressed it, the province, through a mandate as in direction for audio tape, large-print, Braille and reading services. But I'm just wondering, under the input information and the technology, if they've addressed and looked at that avenue, if there's a possibility of incorporating Braille or a translation or whatever.

**Ms Swift:** I'll relay that request to him.

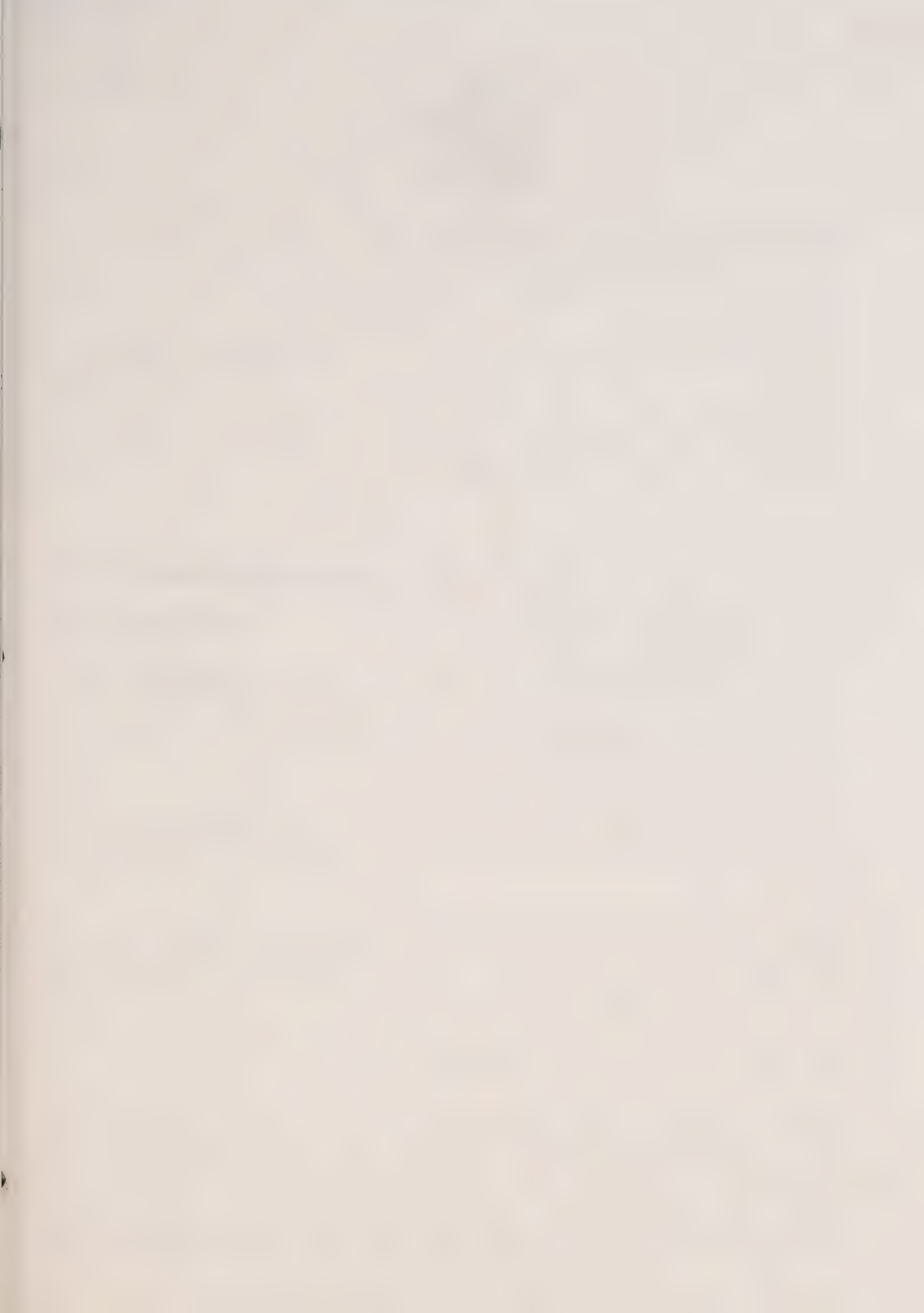
**Mr Hope:** Just so when he comes back, we can have a discussion about it versus me asking the question and waiting for an answer.

**The Chair:** This committee is adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1637.







## CONTENTS

Tuesday 18 January 1994

<b>Subcommittee report</b> .....	M-143
<b>Municipal Freedom of Information and Protection of Privacy Act \ Loi sur l'accès à l'information</b>	
<b>municipale et la protection de la vie privée</b> .....	M-148
Information and Privacy Commissioner/Ontario .....	M-148
Tom Wright, commissioner	
College of Psychologists of Ontario .....	M-157
Dr Catherine Yarrow, registrar	
John Creelman .....	M-161
David Helwig .....	M-165
Regional Municipality of Peel .....	M-169
Deborah Trouten, regional clerk and director of administration	
Robert Candy, supervisor, corporate records	
OPS Blind and Vision Impaired Issues Working Group .....	M-174
John Rae, representative	

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

- \***Chair / Président:** Hansen, Ron (Lincoln ND)
- \***Vice-Chair / Vice-Président:** Wessenger, Paul (Simcoe Centre ND)
  - Dadamo, George (Windsor-Sandwich ND)
  - Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)
  - MacKinnon, Ellen (Lambton ND)
  - Mathysen, Irene (Middlesex ND)
- \*McClelland, Carman (Brampton North/-Nord L)
- \*Morin, Gilles E. (Carleton East/-Est L)
- \*Sterling, Norman W. (Carleton PC)
  - Sullivan, Barbara (Halton Centre L)
  - Sutherland, Kimble (Oxford ND)
  - Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Cooper, Mike (Kitchener-Wilmot ND) for Mr Dadamo  
Elston, Murray J. (Bruce L) for Mrs Sullivan  
Hayes, Pat (Essex-Kent ND) for Mr Paul Johnson  
Hope, Randy R. (Chatham-Kent ND) for Mrs MacKinnon  
Lessard, Wayne (Windsor-Walkerville ND) for Mrs Mathysen  
Tilson, David (Dufferin-Peel PC) for Mr Villeneuve  
White, Drummond (Durham Centre ND) for Mrs Mathysen  
Wiseman, Jim (Durham West/-Ouest ND) for Mr Sutherland

**Clerk pro tem / Greffière par intérim:** Manikel, Tannis

**Staff / Personnel:** Swift, Susan, research officer, Legislative Research Service





M-14

M-14

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 19 January 1994

# Journal des débats (Hansard)

Mercredi 19 janvier 1994

**Standing committee on  
the Legislative Assembly**

**Comité permanent de  
l'Assemblée législative**

**Municipal Freedom of Information  
and Protection of Privacy Act**

**Loi sur l'accès à l'information  
municipale et la protection  
de la vie privée**

Chair: Ron Hansen  
Clerk: Lisa Freedman

Président : Ron Hansen  
Greffière : Lisa Freedman



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 19 January 1994

The committee met at 1009 in the Trent Room, Macdonald Block, Toronto.

MUNICIPAL FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY ACT

LOI SUR L'ACCÈS À L'INFORMATION MUNICIPALE  
ET LA PROTECTION DE LA VIE PRIVÉE

**The Chair (Mr Ron Hansen):** I'd like to bring to order the standing committee on the Legislative Assembly. This morning we have a review of the Municipal Freedom of Information and Protection of Privacy Act.

REGIONAL MUNICIPALITY OF OTTAWA-CARLETON

**The Chair:** The first group to come forward this morning is the regional municipality of Ottawa-Carleton. Would you please come forward and take a seat? I believe we've got three people; we might need one more chair there. We have half an hour. If you can leave some time within that half an hour for questions from the committee, I imagine Mr Sterling would have some questions of you that he's got up his sleeve. So we'll leave some time that gets around to Mr Sterling. You may begin. Would you mind introducing yourselves and your positions for the purposes of Hansard and the committee.

**Ms Kelly McGee:** Thank you very much. My name is Kelly McGee. I'm a solicitor with Ottawa-Carleton. On my immediate right is Mary Jo Woollam, the regional clerk for Ottawa-Carleton and the designated head under the legislation, and on her right is Leslie Braden, the MFIPPA coordinator for Ottawa-Carleton.

Since passage of the Municipal Freedom of Information and Protection of Privacy Act, the regional municipality of Ottawa-Carleton has processed over 750 formal requests under the legislation. Our presentation, as well as our written brief, will highlight some of the problems that we've experienced in the administration of the act.

The first issue we'd like to discuss is the cost of administering the act. The legislated fee structure was intended to create a user-pay system. With over 750 requests processed to date, the regional municipality of Ottawa-Carleton has managed to collect approximately \$5,500 for those requests. There are a number of reasons why this happened.

One of the most significant impediments to a user-pay system is the practice of dividing requests. Requesters divide one single, comprehensive request into a large number of smaller requests. Each request receives two hours of free search time. Dividing the request therefore creates a bank of free search time. Requesters who receive large fee estimates from our municipality indicate to us that they will simply resubmit the request in whatever number of smaller requests it takes to get a free answer.

We've also been instructed by the Information and Privacy Commissioner's office that the search time for which we can charge does not include a number of the

activities that we are required to carry out in order to respond to the request. This includes such things as meeting with the requester, applying the exemptions and consultation with the affected departments within our municipality before we respond to the request. None of these items is covered within the search time for which we can charge.

There is also the issue that there's no cost to a requester to file an appeal. There's no financial incentive to resolve the matter through mediation and there are no costs awarded to the successful party at the end of an inquiry.

Finally, when we transfer a request to another institution, we have been unable to recover any of our chargeable search time up to the time of that transfer.

Another issue related in part to the cost of the administration of the legislation is what we would refer to as frivolous and vexatious requests. The existing legislation provides no streamlined way to handle these requests. There is no means whatsoever of identifying and dismissing these requests in a summary way. There's no abridged system for responding to these individuals, either at the time of the original request or on appeal. As a result, we face repeated requests and appeals from the same individual that clearly fall in the category of "frivolous and vexatious." Each request must be responded to, and often each of these requests is appealed. Each of these appeals results in an inquiry. When the requester receives the order following the inquiry, they launch a new request and the whole cycle starts all over again.

We submit to this committee that the legislation must be amended to recognize the existence of frivolous and vexatious requests and provide an appropriate method for processing these requests and these appeals.

Moving on from the issue of costs, we'd like to draw the committee's attention to a dilemma we feel is raised by section 54(c) of MFIPPA and the apparent inability of certain people to control their personal information as a result of that provision.

Section 54(c) of MFIPPA states that any right or power conferred on an individual by the act may be exercised, if the individual is under 16, by the person who has lawful custody of that individual. We wish to offer the committee some of the practical implications of that provision.

Our health department offers medical services to individuals under the age of 16. Our youth services bureau provides counselling to individuals under the age of 16. As drafted, subsection 54(c) appears to give those people with lawful custody an absolute right to that personal information. The legislation does not make clear who has the greater interest or the greater control over that information.

This provision has raised a number of questions for our

municipality. Can we refuse access to a parent where the individual under 16 has expressly refused to consent to the disclosure? Must we provide notice to an individual under 16 where a legal guardian has made a section 54 access request? Is the parent's right of access absolute? Is it paramount? Was subsection 54(c) intended to strip individuals under the age of 16 of their right to control their personal information?

The act, as drafted, is silent on the effect of competing interests when dealing with an access request under subsection 54(c). MFIPPA is silent on the scope and the limits of those rights.

We submit that amendments are necessary in order to clarify these competing interests and enumerate the rights of individuals under the age of 16 to control their personal information.

Today we'd also like to discuss with you the impacts of the 30-day time limit on responses to requests. Clause 20(1)(a) of MFIPPA allows us to extend the 30-day time limit on responses where the request is for a large number of records. We are not allowed to use this provision where we have multiple requests that are, in effect, all part of one comprehensive request.

The division of the request has been done primarily to create the bank of free search time. However, the requester is also entitled to a complete response to each individual request within the single 30-day time period. We are prohibited from considering the cumulative effect of these requests. We cannot seek an extension. We must respond to each request within the single 30-day time limit.

The sheer volume of these requests has made the 30-day response time impossible for us in some circumstances. But for the requester's willingness to ignore the 30-day deadline, we would have been in violation of the act. However, the requester is not obliged to accommodate us. We have no recourse but to respond within the first 30 days.

We hereby request that MFIPPA be amended to recognize the cumulative effects of these multiple requests, and to provide institutions with the legislated ability to obtain an extension to the 30-day time limit in these circumstances.

We now wish to discuss an issue of personal safety. The existing legislation allows a municipality to refuse access to a record where disclosure may endanger the physical safety of an individual. There are two separate provisions of MFIPPA that create the same general exemption. The first is clause 8(1)(e). If we rely on clause 8(1)(e), our notice to the requester may quote subsection 8(3). This subsection allows us to refuse to confirm or deny the existence of a record to which subsection 8(1) applies.

Subsection 8(1) itself contains 12 enumerated exemptions. The requester is therefore not aware that the physical safety provision has been specifically relied on.

In the alternative, we may rely on section 13 of MFIPPA to deny access to a record where the disclosure could seriously threaten the safety or health of an individual. If we apply section 13, we must quote that section to

the requester. We cannot refuse to confirm or deny the existence of the record. Having to quote section 13 to the requester poses potential problems for our staff who deal with individuals with a history of violence.

Staff at the regional municipality of Ottawa-Carleton have expressed a concern that quoting section 13 in a response to the requester could, in some circumstances, reasonably be expected to trigger the violent outburst they were trying to avoid in the first place by refusing access to the document.

#### 1020

We recommend to the committee that MFIPPA be amended to allow institutions to rely on section 13 of the act without having to specifically refer the requester to that section. This has been achieved through the parts of section 8 we've discussed. We are simply seeking a comparable reporting mechanism to the requester when using section 13.

Next, we wish to briefly discuss the issue of disclosure of personal information to elected officials. Section 42 of the Freedom of Information and Protection of Privacy Act governing provincial institutions allows the disclosure of personal information to a member of the Legislature who has been authorized by the constituent to whom that information relates. There is no comparable section in the municipal freedom of information act. Municipal councillors regularly receive requests from and make inquiries on behalf of their constituents. It is our submission that elected municipal councillors act on behalf of their ward residents, just as members of the Legislative Assembly act on behalf of particular riding constituents. It is our submission that legislative provisions relating to access by elected officials on behalf of their constituents should be the same in both the provincial and municipal access legislation.

We would also like to briefly mention this morning the existing exemption for examination and test questions. Clause 11(h) of MFIPPA allows institutions to refuse access to questions on an examination or test specifically for an educational purpose. This provision may adequately meet the needs of the school boards that carry out their testing for an educational purpose. However, test questions held by municipalities are not generally for an educational purpose. We are more likely to have tests and examinations to determine such matters as language proficiency and other job-related skill requirements. These tests are not given for an educational purpose and therefore do not qualify for the section 11(h) exemption. We would recommend to the committee that section 11(h) be amended to protect all questions to be used on an examination or test of any kind.

Finally, we wish to identify the issue of consents to transfer. Under the existing section 18 of MFIPPA, we are entitled to transfer a request where we believe another institution has a greater interest in the document or where another institution has a document we were unable to locate. The legislation does not require us to obtain the consent of the requester prior to that transfer. The regional municipality of Ottawa-Carleton has had experience with requesters who do not want any other institution to know about their request. We make a point of



advising requesters that we intend to transfer the request, and we get their consent to do so prior to the transfer. The only legislative requirement is a notice of the transfer, and this notice may be issued to the requester after the transfer has taken place. We submit that consent from the requester should be a prerequisite to any transfer, and until such time as the institution receives that consent, the statutory 30-day time limit should be frozen.

This completes our presentation this morning. Thank you very much.

**The Chair:** Okay, thank you. Mr Elston.

**Mr Murray J. Elston (Bruce):** This has been a very helpful presentation. It's got good advice for us.

We've begun to discuss the issue of "frivolous and vexatious." One of the questions that concerns us is how to define this type of application in a statute without running afoul of some person who has an abiding interest which doesn't inflict itself on the rest of us. Can you describe for us perhaps a couple of incidents, if you're able to without violating privacy information, so that we could have a description of the type of inquiry you've been speaking about?

**Ms McGee:** Certainly. We are dealing with an individual now, accessing their personal information, where our MFIPPA coordinator has spent tens of hours with this individual. This particular frivolous and vexatious request is a constant paranoia over the detailing of their personal information in the file, repeated requests for changes to the recorded information in their file. They're not happy in most cases with our decision to not change information. The refusal to change the personal information is then appealed, the matter will go to an inquiry, the person gets an order, the order goes against them, and then they come back with a slightly different request. We deal with other individuals who take one request all the way through the process, get an order, just change what it was they were looking for slightly and make a new request and the whole thing starts all over again.

**Mr Elston:** So one of the elements of frivolous testing would be, of course, repetition, and probably immediacy after the order has been given—

**Ms McGee:** That's right.

**Mr Elston:** —and that there should be some kind of a spirit of the order that allows the local institution, if not to ignore—

**Ms McGee:** To close the file on the matter.

**Mr Elston:** —at least to close a file on that issue and actually to reject an application for similar information.

**Ms McGee:** That's right. To be able perhaps to use the original order as a basis for saying: "We have exhausted this issue. We have exhausted this range of requests."

**Mr Elston:** I was interested in the issue of cost of appeal, because that does get us into a bit of a problem. Just prior to asking you about the costs associated so far with operating the 750 inquiries and the appeals that you've gone through, could you advise if you've been

able to manage interested people with informal resolution of their requests for information, and how much that has been done?

**Ms Leslie Braden:** We have an example just recently where we had a request and the fee estimate was \$2,500. Due to the amount of the fee estimate, we determined that we could provide, under business as usual, the entire amount of the request.

**Mr Elston:** So you have done a number of inquiries where possible.

**Ms Braden:** Yes, where it's possible.

**Ms McGee:** A number of people are not willing to withdraw a formal request. They feel there are securities and safeguards and guarantees that the institution will act appropriately as long as it's a formal request. We've also dealt with that.

**Mr Elston:** Okay, so that you've tried to eliminate the needs but they just say, "No, listen, I'm going ahead."

**Ms Braden:** Yes. We provide personal information under a "business as usual" basis. We provide the client files from welfare. The individuals perhaps do not trust the social services system to be providing all of their documents; therefore, they continue to request them under FIPPA. We don't have a choice.

**Mr Elston:** The next issue I would like to add—by the way, have you a rough idea of the cost so far of those 750 plus the appeals, the inquiries?

**Ms McGee:** In terms of the cost to the institution?

**Mr Elston:** To you, yes, roughly. How many people work full-time in the freedom of information area in Ottawa?

**Ms Mary Jo Woollam:** There's one individual who works full-time—

**Mr Elston:** With you?

**Ms Woollam:** —and that's Ms Braden; with myself, yes.

**Mr Elston:** So you have a full-time salaried person, plus I presume it takes some staff clerical time as well.

**Ms McGee:** And about half of my time as a solicitor with the region is devoted to dealing with the issues.

**Ms Woollam:** There are also staff in each of the departments within the region who are designated FIPPA coordinators as well who actually do the clerical work of getting the files for us, and then we assist them in severing and taking whatever action is necessary to deal with it.

**Mr Elston:** So could you give us a rough idea on the number of people involved with this?

**Ms Woollam:** There are 14 departments and I would say, depending on the nature of the service provided by the department, it could be anywhere from a quarter to 75% of their time.

**Mr Elston:** So you have probably 16 or 17 people in one manner or another dealing with this business.

**Ms Woollam:** Yes.

**Mr Elston:** On the issue of multiple requests and the breakdown of the large requests to get a single answer, how would you suggest we word it? I understand what

you're asking and it sounds reasonable to me, except how do we determine when it is a valid request? For instance, if I make a request and I get an answer and then I say, "Ah, if I got this answer, then if I ask this question I'll get another"—it's again the balance issue.

**Ms Braden:** Yes. For instance, we have an example where the media have accessed inspection reports on restaurants. Instead of putting them all in one request, they divide them up by restaurant, therefore getting two free search hours. They submit them all on the exact same day, so we have 45 requests submitted on one day for 45 health inspection reports on 45 restaurants. It's very clear to us that they're simply dividing this request to save costs.

**Mr Norman W. Sterling (Carleton):** Thank you for coming to Toronto on such a bright, sunny day. Could you characterize where the 750 requests are coming from, both in terms of what it's requiring and expense?

**Ms Woollam:** I think the nature of the requests have changed significantly since we changed our procedures with respect to the ability for people to access the health inspection reports for restaurants. I think we're experiencing now more requests from businesses wanting competitive information or information on their competitors and from individuals with respect to their own personal information.

1030

**Mr Sterling:** So you're talking about commercial investigation. Are the journalists using it much in Ottawa-Carleton?

**Ms Braden:** Not so much in Ottawa.

**Ms Woollam:** Not as much as they were when we were not providing the restaurant inspection information other than under FIPPA. We found that there was a significant amount of media interest in those and they would use the FIPPA avenue. We've since changed our procedures to make those accessible to the media without going through FIPPA.

**Ms Braden:** Since the accessibility of the inspection reports on a regular basis, 20% of our requests come from the media at this point.

**Mr Sterling:** So you really don't have an accurate fix on the overall costs of doing this because there are so many different people involved in responding.

**Ms Braden:** Yes, and it depends on the request. We might have one request that simply takes a matter of a few hours to process, whereas we might have another that involves a number of different people from different departments to meet on the subject and it depends on the number of documents for that one request.

**Mr Sterling:** I think you should get a copy of the Information and Privacy Commissioner's report because he makes some valuable suggestions in terms of the legislation but also in the management of the whole thing. One of the suggestions he made was that when you're entering into a program or requiring information, that before you set up your computer system or your electronic communication system, you think about freedom of information—you obviously have done this with regard to the restaurant inspection reports—and

avoid a whole bunch of costs in terms of going down.

Do you think an application fee would assist in doing away with these frivolous or vexatious requests?

**Ms McGee:** I think it would be very valuable.

**Mr Sterling:** Do you have any idea of the kind of level of application fee that would be required in order to achieve that end?

**Ms Braden:** I think it would be minimal, actually. I think just the idea of having to pay for something, especially if the individual's on social assistance, that it wouldn't take very much to deter the individual.

**Mr Sterling:** I guess it depends on the kind of information that they were requesting. If it was information pertaining to their own ends, then it would be very hard for me as a legislator to accept the fact that you were excluding somebody because they couldn't pay for it.

**Ms McGee:** The philosophy of the legislation is your personal information is free, certainly, so that would have to be respected and continued, but I think a simple filing fee comparable to other application filing fees in existence would operate as maybe a deterrent or at least make people stop and think of the value of the appeal to them, which just doesn't happen now. It's simply a matter of course. There are no impediments.

**Mr Sterling:** Do you know how much you're spending on appeals or do you have any estimate of that?

**Ms Braden:** I'd say we've had about 20, 25 appeals perhaps and it depends if they go to the inquiry stage; I'd say about half have gone to the inquiry stage and that takes time.

**Ms McGee:** Responding to each inquiry requires two or three people's dedicated time for a week to prepare the written submissions and adequately respond to them.

**The Chair:** I'm going to have to go to Mr Hope.

**Mr Randy R. Hope (Chatham-Kent):** First of all, thank you for your presentation. Yesterday we had a presentation from a gentleman from Business Times who made a comment about closed meetings, and I notice in your presentation you talk about in camera meetings.

I'm just curious, say, in a one-year time frame, how many closed meetings occur of council or of set meetings because we got into definite terms yesterday from the person from Business Times and I wanted to approach you about the issue of in camera meetings and how many times they occur and the information that's requested.

**Ms Woollam:** It's the practice of the regional municipality of Ottawa-Carleton that there are only three issues a committee of council or council will meet in camera on. Those would be property negotiations, labour relations issues or issues of personal information. Other than that, the practice of our corporation is we do not have closed meetings.

**Mr Hope:** Okay. The other area I wanted to touch on is around—we're hearing a lot of municipalities calling for names of individuals who are on welfare. My question to you would be, is and should that information be provided to elected officials?

**Ms McGee:** I think we're restricted both by the existing legislation and the judicial review of the council



that asked for that information. We have, on occasion, advised elected officials who were looking for other types of information that under the legislation we did not feel they had a right to it. We operate under the provisions of MFIPPA that say they require it to carry out their functions. We also have a corporate policy adopted by our regional council setting up criteria and mechanisms for a councillor seeking information.

**Mr Hope:** Okay, you've pretty well answered that very clearly. The other thing is the handling and distribution of normal information that gets out there. Mr Sterling has raised that your financial statements that appear in newspapers and you spend all this money for are really useless information. The information that's usually open to the public—and I'm talking about communication—how do you get it out there?

**Ms Woollam:** We make extensive use of the local daily papers. We also have a fairly sophisticated touchline information system whereby members of the public can access committee agendas. They can access the authors of specific reports. They can give us their comments on any issue that we wish. We have a very open policy in terms of allowing access to information to the members of the public and the community.

**Mr Hope:** Okay. Yesterday, during a presentation, there was a gentleman who was here about the visually impaired. Knowing that you have 750 applications that are being processed in this time and we're trying to grapple with the issue of making sure every citizen in the province of Ontario has access to this information, what type of program or do you have a program that assists those visually impaired or have you even received a request, I guess would be the first one. If you haven't received a request, it's really unfounded for me to ask the second part of the question.

**Ms Braden:** No, we've never received a request.

**Ms Woollam:** We haven't received a request. However, there are services available within the community. I think if we did receive a request, we could certainly make use of what's available to transmit it, be it to people who are hearing-impaired or whatever. It's our practice to make the effort.

**Mr Hope:** Would it be possible to have a copy of your corporate policy dealing with welfare?

**Ms McGee:** We don't have a corporate policy specifically dealing with welfare. We have a corporate policy dealing with how councillors go about accessing information.

**Mr Hope:** Would it be possible to get a copy of that?

**Ms McGee:** Certainly.

**Mr Drummond White (Durham Centre):** I was interested in your comments about welfare recipients, Ms Braden. The welfare recipient or applicant who may have been refused assistance, whatever the situation might be: How long would it take to access their personal file?

**Ms Braden:** It varies on the individual because of the case loads that the workers have.

**Mr White:** Would there not be just one file in the welfare department?

**Ms Braden:** Usually they ask for a copy of the file and that's the problem. It depends on the thickness of the file and the length of time it takes to copy it, but usually it's well within the deadline.

**Mr White:** Well within two hours.

**Ms Braden:** No, no; within the deadline.

**Interjection:** Within the 30 days.

**The Chair:** Mr White, your time has expired. I couldn't hear half the questions anyhow.

Thank you for coming before this committee and putting up with the cold down here in the south.

**Ms Woollam:** It's significantly cooler in Ottawa.

**The Chair:** I believe so too. Thank you.

#### FREEDOM OF INFORMATION LAW ENFORCEMENT COORDINATORS NETWORK

**The Chair:** In the next group I believe we have four presenters. Welcome to the standing committee on finance—wait a minute—the standing committee on the Legislative Assembly. I was too long on that other committee. We have half an hour. If you can, leave some time for questions. You may begin.

1040

**Ms Marilyn Taylor:** I'd like to take this opportunity to introduce us. I'm Marilyn Taylor, chair of the Freedom of Information Law Enforcement Coordinators Network.

I have with me today witnesses who appear on the presentation that you may wish to question following same. To my left I have Sergeant Paul Perchaluk from Waterloo regional; I have on my right Nancy Groppo, freedom of information analyst, who works with me at Halton Regional Police Service; I have Rusty Beauchesne from Metro Toronto, who is representing the legislative committee of the Ontario Association of Chiefs of Police; and I have staff sergeant Ray Desjardins from Metro, and Ray is their freedom of information coordinator.

The full intent was for me to present this in its entirety today and then turn it over for questions. Unfortunately, due to one of the flu bugs, my voice is not the best and I would like, with your permission, to turn it over to my analyst who will in turn read the submissions for you.

**Ms Nancy Groppo:** The membership and objectives of the law enforcement coordinators network: The law enforcement coordinators network is a subcommittee of the information and technology committee under the auspices of the Ontario Association of Chiefs of Police. This subcommittee represents all municipal police services in the province of Ontario. Membership includes all freedom of information law enforcement coordinators covered by the Municipal Freedom of Information and Protection of Privacy Act, including representation from the Ministry of the Solicitor General and Correctional Services.

The prime objectives of the law enforcement coordinators network are as follows:

- (1) To recommend guidelines for the standardization of internal policies and procedures.
- (2) To provide assistance and consultation in solving operational problems.
- (3) To provide a forum for ongoing training.

(4) To act as a unified voice for the Ontario municipal police community in matters relating to access and privacy issues.

This subcommittee wishes the Legislative Assembly to know at the outset that the Ontario Association of Chiefs of Police has great admiration and praise for the ways in which the main bodies involved with the administration of the Municipal Freedom of Information and Protection of Privacy Act have gone about their tasks in bringing access and privacy rights to individuals. The scale of the undertaking and the volume of requests involved, however, mean there are some aspects of the legislation and its operation that call for some fine-tuning or slight alterations.

These proposed amendments would not alter the fundamental principles or philosophies of the act. The proposed amendments are directed to the efforts of the Ontario law enforcement community to better serve and protect the public in respect of access and privacy protection. The overwhelming bulk of our labour is devoted to the public both in (a) providing access to institutional records to requesters, and (b) in protecting the privacy of individuals. These individuals, in the vast majority of cases, have absolutely no connection to the police service other than involvement in a criminal matter as a witness, a victim, a confidential source of information, as opposed to a police informant, or innocent bystander.

I stress this important aspect of the act's operation vis-à-vis the police service. We are not overly concerned about protecting police operations or officer safety as the act has already provided ample protection in these situations.

The recommended amendments can be divided into two categories:

Category 1, financial: The recommended amendments include realistic cost recoveries, standard user fees, updated costs incorporated into Ontario regulation 532/87 and Ontario regulation 517/90. We also recommend a vexatious request class.

Category 2, administrative: The recommended amendments include section 12, solicitor-client privilege needs to be altered, clause 8(1)(a) needs to be added, time limits must be standardized and mutual agreement for oral appeal representations.

Recommendation 1, subsection 45(2): "Despite subsection (1), a head shall not require an individual to pay a fee for access to his or her own personal information."

Recommend: Subsection 45(2) be repealed and a \$10 administrative fee be accompanied by all requests; no further fee attached to the personal information request; full fee recovery for general information requests.

Recommendation 2, refer section 12: "A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation."

Solicitor-client privilege has been ruled on appeal not to include crown briefs. It is recommended that this

section be amended in order that crown briefs may be exempted.

Recommendation 3, refer subsection 18(3): "If an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request."

Recommend: The head of the institution shall have 15 working days to transfer a request. Upon receipt of the request, the receiving institution shall have 30 working days to respond to the requester.

Recommend: Subsection 18(5) be repealed.

Recommendation 4, refer section 19, the preamble: "Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 18, the head of the institution to which it is forwarded or transferred, shall, subject to sections 20 and 21, within thirty days after the request is received..."

Recommend: Section 19 be amended from 30 days to 30 working days to complete a request.

Recommendation 5, refer clause 45(1)(a): "If no provision is made for a charge or fee under any other act, a head shall require the person who makes the request for access to a record to pay a search charge for every hour of manual search required in excess of two hours to locate a record."

Recommend: Clause 45(1)(a) be amended to read, "A search charge for every hour of manual search required to locate a record." Recommend the free search time of two hours be eliminated from this section.

Recommendation 6: A new section be created to allow institutions to disregard frivolous, nuisance or vexatious requests. We note the inclusion of a vexatious requester clause in the recently proclaimed British Columbia legislation, reference section 43. This request is similar to a recommendation that was incorporated into the standing committee's 1991 provincial review, refer 59.

Recommendation 7: The appeal process now allows for verbal representations instead of written submissions as required in the past. Recommend verbal representations only upon mutual agreement between the Information and Privacy Commissioner's office and the institution.

Recommendation 8: All commissioner's orders should grant a minimum of 30 working days after the release of the order to produce the records. A standard period of 30 working days would allow the institution to carefully study the wording and reasoning of the order and, if necessary, apply to the court for judicial review.

#### 1050

Recommendation 9: A new section should be added so that when a request for information is received for a major case still under investigation, such as a homicide, the institution may apply to the Information and Privacy Commissioner's office for an exemption from collecting and stamping the records until the investigation and



judicial process have been completed. If proof is required to substantiate the open investigation, the officer in charge would submit a sworn affidavit to that effect.

Recommendation 10: Further to Ontario regulation 517/90 under the Municipal Freedom of Information and Protection of Privacy Act, the following amendments to the fee schedule are recommended:

“(a) Refer section 6.1:

“An increase in photocopying costs from 20 to 30 cents.

“(b) Refer section 6.3:

“An increase from \$7.50 to \$10 for each 15 minutes spent manually searching for a record by any person. Also elimination of two free hours of search time.

“(c) Refer section 6.4:

“An increase from \$7.50 to \$10 for each 15 minutes spent by any person for the preparation of a record for disclosure, including reading, reviewing and severing a part of a record.

“(d) Refer section 6.5

“An increase from \$15 to \$20 for each 15 minutes spent by any person to develop a computer program or other method of producing a record from a machine-readable source.

“(e) A new section be created to allow for chargeback of audio cassettes, video cassettes and computer discs. This is to reconcile the municipal regulation 517/90 with Ontario regulation 532/87.”

This now concludes our presentation. We appreciate the opportunity to appear before you and present these recommendations. We would be pleased to answer any questions you might have or address any concerns.

**The Chair:** We'll start off with approximately five minutes per caucus and Mr Tilson.

**Mr David Tilson (Dufferin-Peel):** Your comments about extending the time in different areas have been made by other delegations. I understand that. You have so many bodies to look all this material up.

Who should I address my questions to? Whoever wants to answer, I suppose.

**Mr Paul Perchaluk:** I'll take that.

**Mr Tilson:** I understand that, but on the other hand there are matters that need to be dealt with quickly and there are complaints that the process is too long as it is. I've thought about that issue, and I don't know whether you have as well or whether you've had complaints that the process is too long. I understand both views, because I have experienced it personally, that you ask for something and it's over, the issue's over by the time you go through an appeal process or whatever, all these different issues, mediation, whatever one wants to call the different processes you go through.

Would you consider recommending any different set of fees? In other words, if you had to have something that required immediate attention, the fee might be different than something that didn't require immediate attention. You still wanted information or documentation but you perhaps didn't want it immediately.

**Mr Perchaluk:** As far as the time period, the 30 days, we're kind of unique in the police services because when we put out to the officers, let's say a homicide, we may have to put out to 20 to 30 officers. We have numerous shift schedules and days off, people are on holidays etc, and we usually try to put a seven-day response for the people to get their reports back. With taking things into consideration, it could take up to 14 days. We're always against the wall.

**Mr Tilson:** I understand that, and I forget the delegation, but a delegation has already indicated that there are examples where the police in particular have been put through the hoops on some of these applications, particularly with the subject of frivolous applications. But I just get concern from the people who are making the application, the genuine application, who require information for something that requires immediate attention and yet groups such as yours, quite rightfully, because of the person-power you have available to do these things, are saying, "No, we need more time; we need working days."

**Mr Perchaluk:** Realistically, being a coordinator, if I can get a response out in five days, I'll get it out in five days. I like to get it out the door as fast as I can.

**Mr Tilson:** The other issue is with respect to fees, and that suggestion has been made by other delegations, particularly people who are providing the information dealing specifically with the frivolous claims, that that is one solution, that you have a fee to simply make an application.

**Mr Perchaluk:** That's right, and that's what we're recommending.

**Mr Tilson:** I look at other areas where fees are provided; for example, sheriff certificates. The fees that have been charged in this province have increased so unbelievably to get a snowmobile licence that people don't understand. They don't understand whether it's abuse of power of the government that fees are being charged through the wall to assist in the administration. People are actually making serious allegations, generally to the Treasurer, but to be fair to the Treasurer, it may not be the Treasurer. The Ministry of Consumer and Commercial Relations is another prime example. The fees that have come out of that one ministry in this past year are unbelievable. I won't bother listing them; you may know them yourself. That's the other side of the coin, that people generally want information and the potential for abuse of power by the administration is rather great.

**Mr Perchaluk:** That's true, but we are under budget restrictions also. We have our problems. As far as fees in general are concerned, remember there's always subsection 45(4), which allows us to waive fees; if there are certain reasons, we can waive those fees. We have to increase. It's just too costly for us.

**Mr Tilson:** To further help us in understanding your concern about that, can someone of the group talk about what the costs are to provide information on an overall basis, or even localizing it, to give some general feeling for why you're making this request?

**Mr Ray Desjardins:** As we mentioned at the beginning, I am the coordinator for the Metropolitan Toronto



Police Force. In terms of costs, an overall look at costs, last year we processed 762 official requests. The budget for my unit is \$462,000, and there are nine people in my unit and we're kept busy all the time. The problem—I won't belabour the point; we've gone into the costs—is that the way the situation is structured now, there is two hours' free search time for personal information. In the overwhelming bulk of the cases, it's not worth our time to charge \$10 for a few pages of records because it costs us \$20 for administration and processing of the documents, so we waive the fees. I would say since 1991 we've had well over 1,700 requests at the police force in Metro here and we may have recovered well under \$1,000.

**Mr Pat Hayes (Essex-Kent):** I'm looking at your recommendation 9. I'm guessing, but it may be that what prompted this is an ongoing case now from the media that you make some investigations public. With issues like this, would this really help in the case of avoiding, I suppose, interference with investigations? In other words, could you give us examples of how the media using freedom of information could actually hinder investigations?

1100

**Mr Perchaluk:** What happens is that presently, if it's a major homicide, we could have 20 to 30 investigators wrapped up on it and it's ongoing. As the act states now, the request comes in and there's a section under the act that says we could exempt it, but the problem is that the act says we have to collect all these documents, stamp them and then defend it page by page. If you're taking notes from investigators in the field, it's interfering with the investigation. To be quite honest, we've had those situations and we've spoken to the requesters and they've been fairly decent; they didn't realize. Or if there are charges laid that's another situation, where the investigation is complete but it's before the courts, and again there are exemptions; we won't release until the legal aspects are over. We've talked to them and said, "When the court case is over, come back," and they've been fairly decent about it. We've had no problems. Our problem is, we just may run into a situation where somebody puts us against the wall and says, "No, defend it." It can wrap us up and virtually shut us down for quite a while. I think it's a reasonable request.

**Mr Desjardins:** I'd like to add a bit to that. The problem here is that a distinction has to be drawn between an ongoing investigation, a criminal matter which has no resolution and is technically still an open file—it may be three, five or 30 years old—and a situation where something is immediate and intensive. There's just no practical way we can get those records as required by the act, get the originals in, photocopy them, stamp them and make an index and get the originals back in the field without physically interrupting the operation.

A couple of years ago, you may remember that in Toronto, in the Parkdale area, there was an intensive police investigation over the course of about a week, where a young girl was abducted. We had literally hundreds of officers and auxiliaries out in the field submitting current reports and supplementary reports by

the hour. If a request had come in by someone requesting all the police reports relating to this particular investigation, we would have been compelled to gather all those records and—the ridiculous spectre of going into the field and saying, "Excuse me. Before you sign that, can I have that and can I grab this from your briefcase?" and taking them to our office, photocopying and then returning them.

Admittedly, this type of situation doesn't happen very often, and when it has we've dealt with it on kind of an ad hoc basis. We've made arrangements with the appeals officers at the IPC. As Sergeant Perchaluk mentions, we'll sometimes phone the requesters and very often will explain the situation to them and they understand. That's fine. But when push comes to shove, we may get a vexatious request or something like that or someone who just won't listen to reason: "No, I want this matter to be dealt with right now." Understand that we're not saying it's a question of whether to give the records to the requester. It's a question of being compelled by the act to gather in the originals ASAP.

**Mr Hayes:** Could you give us some examples? There is a lot of discussion about frivolous or vexatious requests. Some that you people may have to address may be a little different from, say, a municipality; in your police work, for example. I'd like examples of what you feel is a frivolous request, for example.

**Mr Desjardins:** We have a number. I must say, having listened to the first deputation from the regional municipality of Ottawa-Carleton, I concur with what they said. That's one of the tactics, to break the big request down into the smaller requests.

But we get requests that I can only categorize as being right off the wall. There are requesters who ask for the number of toiletry articles in the chief's washroom, who has access to the chief's washroom, this sort of thing. They come in and we're forced to deal with them. There are a couple of notorious requesters—I think most of us know them, but of course I'm bound by the act, as everybody else; I can't mention names—who constantly bombard the force with these vexatious requests. One of the individuals involved has made statements in a magazine here in Toronto that he's a counterculture rebel, he's an anarchist, and he looks on this as a legal way of destroying government by forcing it to spend itself into oblivion sort of thing.

**Mr Hayes:** Sounds like the opposition.

**Mr Elston:** We don't have anything on you in that regard. You're way ahead of us.

**Mr Jim Wiseman (Durham West):** I think we taught them their tricks.

**Mr Desjardins:** Unfortunately, he's chosen the police forces to start his campaign on. The police forces, if you check with the Management Board of Cabinet or the IPC, you'll find have been very serious about our FOI obligations and we take each request very seriously. So he knows we're not going to stonewall him or play tricks on him but are going to treat it as a serious request, notwithstanding that it is in our opinion a vexatious request or just a nuisance request.

Another example of a request in that vein is that



people who are guests of Correctional Service Canada who have a certain amount of time on their hands will ask for every piece of paper that's ever been produced about them from the force that put them behind bars. Understandably, they're not too kindly disposed towards that force. We're forced to give them things such as crown briefs, statements, everything they would have had access to under full disclosure at the criminal trial, and notwithstanding that they've already had it, there's no provision in the act for us to say, "You've already received this at full disclosure at the trial." We can't quibble over the fact that it's a second or third copy of a document they want.

**Mr Elston:** Actually, I was going to start off with the solicitor-client privilege, the crown brief. You're not trying to close down any full disclosure issues; it's basically people normally outside the process that you're talking about in terms of excluding access to crown brief material?

**Mr Desjardins:** Precisely, yes.

**Mr Elston:** Have you got some indication of how these fees would work? I was talking to Steve and we were running through the fees and looking at somebody being paid \$20 for every 15 minutes for computer time or whatever. Most of us think that's a fair bit of money. Wouldn't somebody be making money at that rate?

**Mr Perchaluk:** No, we're not making any money whatsoever.

**Mr Elston:** So it's costing you \$80 per hour in some cases to do this work?

**Mr Perchaluk:** When you get into the computer aspect, yes, it does. Most of the times when we get these types of requests it isn't the police officer it's going to; we go to our technical people, our administrative people, our computer people.

**Mr Elston:** And they plus the cost of the machine actually costs you \$80 an hour?

**Mr Perchaluk:** That's right.

**Mr Elston:** The only thing that I want to be sure of is that somebody isn't going to use this, as I think basically David was referring to before, as a money-maker. If we could be assured that we weren't doing something that was gouging somebody and earning money for people, I guess we'd feel satisfied. We really don't want to do that, yet we don't want to see you people and your operations out of pocket either.

**Mr Perchaluk:** Always remember that there is a place in the act for them to appeal the fees to the IPC. If it's unreasonable, they can always do that.

**Mr Elston:** Except that if we change the fees, there would be a presumption that they're reasonable fees. That's why I'm asking the question before we get into that issue. It seems like a waste of time for the Halton people, let's say, to have to go to appeal about a recently changed regulation, for instance.

**Mr Perchaluk:** As an example, we have a lot of requests for fatality and accident information, stuff like that. We charge them probably anywhere between \$10 and \$20, but the cost to us to process those files is

probably \$300 or \$400 by the time we get through with it. Those are notorious. Because of the fee structure, that's what we charge them. We charge \$15 for an accident report, and we have other policies like that. When you go through freedom of information, they're getting it for virtually nothing. It's unrealistic.

**Mr Elston:** If there is a piece of information being requested that would have a fee attached otherwise, you suggest that we at least amend it to say the same fee will apply in those circumstances, which doesn't seem to be too unreasonable in most cases.

**Mr Perchaluk:** Yes.

**Mr Elston:** I'm interested in the vexatious, frivolous inquiries as well. Do you have people who inquire about shift times and the strategy around the organization of officer time?

**Mr Perchaluk:** Yes, we do.

1110

**Mr Elston:** How do you decide when that is a legitimate taxpayer inquiry or perhaps a less honest inquiry, how somebody might figure out how to commit a crime, for instance? Or can you?

**Mr Perchaluk:** It's difficult. But the requests we mean are what Sergeant Desjardins was talking about, the amount of toilet paper used in your organization for a year. It's those types of requests we're talking about. People have honest requests and there's a lot of people doing research, and we have no problem with those, like "How many cars?" and "How much gasoline do you use?" or "How many police shirts do you buy per year?" stuff like that. That's not frivolous. They may not seem important to us, but for some people they would be. It's no problem whatsoever. In my office, we do a lot with students doing projects on the police etc and some of the questions are a little different, but it's no problem whatsoever.

It's just these absolutely weird ones we're talking about. Who would want to know how much toilet paper is used in, let's say, the chief's office? Maybe somebody who sells toilet paper would be interested in how much toilet paper we use as a whole, but not in the chief's office, or how much coffee is drunk by the chief etc. It's that type of thing.

**Mr Desjardins:** If I can add to that, one of the answers, in terms of your question about shift scheduling and that sort of thing, is that it's on a case-by-case basis. It's a call. That's what we do at the freedom of information unit. If it is a straightforward shift scheduling question, "How many officers are employed at this division and what shifts do they work?" that kind of thing, fine, sure, you can have it all. I suggest that if there's a case where on a particular night there's a plan to put twice as many officers to flood an area for a certain type of crime, then it wouldn't be in the interests of law enforcement to release that information. There's a section, I believe it's 8(1), that would prevent that. When there are tricky cases, we look at it and basically decide each case on its merits.

**Mr Elston:** I have another question.

**The Chair:** One short one.



**Mr Elston:** This is a short question that may get a longer answer. When you have a problem case that goes back for a number of years and is unofficially dormant—not active perhaps, yet not really closed, because it's very difficult to close any of these—when do you decide how to release the information around that case? Obviously, one section here says that an officer could give an affidavit that says the case is still open, for instance. Let's say a problem occurred in the late 1950s and yet it's still there, or, as happened with that fellow from Hamilton, the accident occurred in the 1970s and then he ultimately shows up. How do you decide when and how much information is available in a case that is maybe open but not active?

**Mr Desjardins:** We'd have to go back to the officers in charge of the original investigation and talk to them. In my own organization, we have a training component as well. For the last five years we've been telling police officers that FOI is legislation, it's here to stay, and we have to abide by it. We ask them, "What can you release?" They'll tell me, if they think something would be fairly innocuous: "You can release this. This is all stuff the suspect knows, but this stuff is pretty sensitive. I wouldn't want to release that." Then we slot the material that shouldn't be released, in the opinion of the head of the investigation, under the protection of one of the sections of the act. Usually it's law enforcement, section 8, or personal privacy, section 14. Then we tell the requester, "You can have this amount; you can't have this amount."

Then the requester goes to the Information and Privacy Commissioner of Ontario, who is very scrupulous about checking and forcing us to justify our decisions. I must say they're very good at their job. It's not just a case of myself saying, "This is protected by 8(1)(c) or 8(1)(l)." The IPC has to agree. Often they don't, and that's what the whole appeal process is about.

**The Chair:** Thank you for coming before the committee today, and safe trip home.

**Mr Wiseman:** Yes, stay away from the Don Valley parking lot.

**Mr Perchaluk:** I'm on the GO train.

#### PSYCHIATRIC PATIENT ADVOCATE OFFICE

**The Chair:** The next group is the Psychiatric Patient Advocate Office. We have one half-hour, and we'd like you to allow us some time. As you can see, the committee is very interested in asking questions about your brief. They're just getting it now so they haven't had a chance to read it in advance, so they most likely will have questions. You may begin.

**Mr David Giuffrida:** My name is David Giuffrida, acting director of the Psychiatric Patient Advocate Office. I've been associated with our program since it began in 1983. I've been a patient advocate and, for several years, its legal counsel. In that capacity and in my current one, I've been in a position to respond to numerous freedom of information requests made to our office.

I would like to take this opportunity to present to you the perspective of a program that has both counselled other individuals and groups on the constructive use of

the freedom of information act to secure information that we think will help make publicly funded programs more accountable and the perspective of an organization that has had to process over 100 freedom of information applications, and share with you some of our concerns about the current operation of the legislation.

I should add that our experience is with the provincial freedom of information act, and it is my hope that the comments I share with you will have some application to your concerns about the municipal legislation as well.

Our program works for the rights of inpatients in the 10 provincial psychiatric hospitals, and I don't wish to suggest that the concerns I'm going to share with you are the concerns of all our clients. Indeed, some people in the provincial psychiatric hospitals I think are quite enthusiastic users of the freedom of information act and probably wouldn't support some of the suggestions I'm going to be presenting to you to limit the abuses of the system. But I think they speak to the concerns of people in the business of trying to run a small office and work within the spirit and the law of legislation such as FIPPA.

I'd like first to speak to—and it appears on page 2 of our submission—modifications to increase efficiency and reduce abuse of the system. Just in the short time I've been able to observe other presenters, I've become aware that you will have heard all of these from other sources.

First is the addition of a "frivolous and vexatious" clause. Let me say that I would not leave it to the head of an institution to unilaterally determine that a request or a requester is frivolous and vexatious. I think it's appropriate to have a more detached body rule on that issue, such as the commissioner. A head might be in the position to make an application to have a requester so designated. I'm concerned that inappropriate use or inappropriate drafting of such a clause could silence legitimate requesters, and that of course is something we want to avoid. But it's also my understanding that such clauses operate in our court system effectively and are used judiciously and in a limited way but are available when appropriate.

The second regards nominal fees for filing requests and for filing appeals. Here again I think it's important to walk a line. I can share with you, from members of the public who have called our program, experiences in which public hospitals have set prohibitively high fees for photocopying information: a \$20 flat fee for even one page, for example. One must speculate whether this is being used to generate revenue or whether these rates are set so high to discourage people from having access to their own records.

However, having said that, I think it is legitimate to have a \$5 or \$10 fee, say a \$5 fee for personal information and a \$10 minimum for general information requests. I'm conscious of the fact that, for example, the majority of our clients are on income maintenance, and I wouldn't want to set a fee so high that it's prohibitive for them, but it would perhaps deter someone from making 30 applications instead of just the one that is most important to them.

The third item concerns a fee for copying documents received from the requester. This may sound niggling, but



if you're in a small office such as ours, I personally end up going through some of these files, and it's frustrating when a requester asks for, "Everything you have on me," and the file's two inches thick and 90% of it is correspondence sent to us by the requester. It would be satisfying just to be able to list the documents and say: "You should have these; you sent them to us. If you wish us to copy them for you again, then you'll pay us to copy them for you again."

Item 4 concerns a fee for repeated requests in the same year. The previous presenters spoke to the fact that a requester may have had disclosure of certain documents and none the less asks for them all over again. It would be helpful to be able to say, "You already got that recently." If it's personal information, there's a general presumption that we don't charge, but, "If we already sent it to you in the last year, and you've misplaced it or you've requested so much that you really can't keep track of what you have, we're going to charge you for the second time around."

Item 5 is perhaps a bit more satiric: fees for locating personal information not stored as such. The classic case for personal information requests is one in which the requester says: "I'd like to see my Highway Traffic Act file. I'd like to see any personal property security, liens listed under my name." This is information that is stored by the institution alphabetically by the name of each individual member of the public so listed. It's another matter when a person says, "I want to look at my personal information wherever it may be stored, including your general information files."

#### 1120

This may not be a realistic analogy, but it occurred to me that a retired elevator inspector might say to his or her former employer, "I want you to do a search of your files, wherever they may be, of every place my name appears, every elevator inspection report I may have ever filed." The employer might say: "We file those geographically by the location of the elevator. We don't file them by the name of the inspector. We'd have to look in every file."

You should either not be obliged to make those searches at all or, even though it is a personal information request, you should be able to charge for that search as if it were a general information request or oblige the requester to narrow it: "You tell us exactly where we may find your name and we'll look for it." From our experience, we're now inclined to take a tougher stand about that and oblige the requester to narrow it. You can just shut down an office for a couple of days while you're looking through literally every file to see every occurrence of an individual's name.

Item 6 deals with restrictions on access to the confidential records of others. Evidently, one of the key purposes of FIPPA is to protect the privacy of individuals, and I know it is a task that is taken quite seriously by the commissioner as well. The legislation leaves room for uncertainty when the issue concerns what may be characterized as shared personal information. There's a file maintained about client A or patient A, but in it he or she speaks about individual B, and B then says: "There

may be stuff about me in that advocate-client file, in that lawyer-client file, in that clinical record. It's the clinical record of somebody else. It's not my clinical record; it's not my advocate-client file, but I'd like you to go through and see if my name appears anywhere in there. I'd really like to poke around and have a look." We received 80 of these in a short time, each one photocopied with just the name of the requester and the name of the hospital put in, all personal information requests for which we could not charge a fee.

There was the tremendous amount of time required to complete the task, time taken away from important work we do, serving people in psychiatric hospitals. There's also the more important issue of maintaining the confidentiality of advocate-client files. People in certain relationships, relationships with health care providers or with their lawyers or, I would say, with advocates for vulnerable people, have an expectation of confidentiality. It would be desirable for that expectation to be better articulated in the legislation so as to say that a requester's right to have access to his or her personal information does not extend to any of his or her personal information that may be contained in someone else's file—a solicitor-client record, clinical record or advocate-client file—just to make it abundantly clear that no, that is not even an area of search.

I wanted to speak not only to the foregoing half-dozen suggestions that may in some ways restrict access, but also ways in which access by members of the public to records they don't now see can be expanded. Our program has always been an enthusiastic supporter of the freedom of information act. I spoke to a committee of the Legislature in 1986 and 1987 when the freedom of information act in bill form was before that committee. It coincided with the Mental Health Act being before another committee of the Legislature down the hall. We advanced the rights of patients to have access to their clinical records.

It's perhaps ironic that that right was put into the Mental Health Act and gave psychiatric patients the right of access to their clinical records when no corresponding right was put into any other legislation to give a cardiac patient, a patient in the maternity ward or a patient at a dentist's office the right to see their own records. I say it's ironic because the argument advanced by health care providers opposing this kind of access to clinical records was that the patient might be upset by it. Well, what category of patient is most likely to be upset, if any, but a psychiatric patient?

Since 1987 anyway, going on seven years now, psychiatric patients in provincial psychiatric hospitals and the psychiatric wards of general hospitals have had, at least on paper, a right of access to their clinical records, and the sky has not fallen in. It has proven not to be a problem. In fact, I believe it increases the accountability of health care providers to the people they serve that the patients are able to see what has been written about them.

But the fact is that in the psychiatric wards of general hospitals there are currently no advocates. The patient advocates employed by our program are limited in their scope to the 10 provincial psychiatric hospitals. We



receive calls from members of the public who say, "I have made an application for my record to the clinical records department of this public hospital in which I was a psychiatric patient," and either they've ignored it entirely or have said, "But it'll cost you \$200 to see it," some prohibitively high fee.

I've been describing to you the right of access to psychiatric records, but the anomaly continues that whereas the psychiatric patient at a general hospital has a statutory right to see his or her record, even if it's one that may be ignored in practice, a patient down the hall in the cardiac unit or any other unit has no such statutory right.

There was a right found by the Supreme Court of Canada in the *McInerney* case in 1992. We were grateful to see that evolution in the common law, but it's our experience that in practice it hasn't filtered down to health care practitioners and to health care facilities as it ought to. We continue to receive calls from members of the public who say they have not been permitted to see their records despite the fact that the Supreme Court of Canada has found, in most cases, a duty on health care providers to share those records.

Ideally, the time is ripe for comprehensive health care information access and privacy legislation. There are unique issues raised by the collection, use and disclosure of clinical information. We're paving the information highway now, and as hospitals become computerized questions are raised about what hospital staff should have access to what information about other patients on other wards in the hospital etc. It's appropriate to focus attention on these issues and specialize legislation. But this legislation has been discussed for a number of years and discussion papers circulated by the Ministry of Health, and no bill has yet been introduced. I wanted to take this opportunity, since we do not yet have such specialized legislation, to ask that the committee consider whether there are other statutory avenues in which users of health care services can be guaranteed, in statute, a right of access to their clinical records.

Of course, the Freedom of Information and Protection of Privacy Act suggests itself as a vehicle for that. It would have the additional effect, I think a desirable one, that members of the public would have access to general information about public hospitals: They could get at the budget records, for example. But I have to acknowledge that the freedom of information act is, if you will, generic legislation that isn't particularly tailored to the special circumstances of clinical records.

I've noted on the bottom on page 5 some ways in which the freedom of information act might have to be modified. It's not at all an exhaustive list if it were to deal with access to clinical records with appropriate sensitivity.

For example, in the first bullet point at the bottom of page 5, it would be appropriate to better guarantee the confidentiality of clinical records to say that no one other than the patient can go through the patient's clinical record looking for the requester's personal information.

Second, the Mental Health Act has a provision that there can be a review of the mental capacity of the

requester to see the information, and there's no corresponding mechanism in the freedom of information act.

Third, at the top of page 6, the freedom of information act also puts restrictions on from whom personal information can be collected and creates the presumption that personal information will be collected from the person it's about. That intuitively sounds right, but I think in political situations there are strong arguments to be made to authorize another manner of collection; for example, someone may be unconscious in Emergency and you would expect clinicians to be able to collect personal information about the unconscious patient from anyone who's standing around and can help. Similarly, for psychiatric patients who may not be able to tell their own histories, who may be mentally incapable, some alternative methods of collection should be authorized.

If broader inclusion of clinical records were contemplated in the freedom of information act, these and all the other issues I haven't mentioned would have to be addressed.

I'd like to conclude my presentation and allow time for questions.

1130

**The Chair:** Mr Wessenger, five minutes.

**Mr Paul Wessenger (Simcoe Centre):** I was interested in your comments with respect to bringing hospitals under the freedom of information act. Is that what you're suggesting as in interim solution, that if comprehensive health legislation doesn't proceed we should in some respect include public hospitals under this legislation?

**Mr Giuffrida:** I think that should be contemplated. I'm trying to be mindful of what the jurisdiction of this committee is. There are other pieces of legislation like the Public Hospitals Act that deal with public hospitals. If you're starting from scratch, that might be a place to put such provisions, but yes, looking at interim solutions with vehicles available to us now until comprehensive legislation comes in.

**Mr Wessenger:** I gather you're suggesting that, for instance, administrative procedures could be fairly easily brought under the provisions of the freedom of information act. Is that correct?

**Mr Giuffrida:** I don't see a problem with that, but administrators of hospitals I'm sure would be pleased to apprise you of any they see. I note that the provincial psychiatric hospitals, because they are government-owned and -operated, are institutions under the freedom of information act and have worked under FIPPA since it became law. They've probably experienced some of the headaches I'm describing to you as well, but overall I think it's a positive thing that hospitals be exposed to general information access.

**Mr Wessenger:** Do you think, as an interim basis, we should look at the model of the Mental Health Act with respect to how we should deal with clinical records and perhaps limit it to the same scope as under the Mental Health Act?

**Mr Giuffrida:** I think the paradigm in the Mental Health Act is a good model to look at. I would add one proviso, though. When that was being designed—and I



had the opportunity to comment on it a number of years ago when it was being designed—there was an intent to create a strong presumption in favour of disclosure of clinical records to the patient. Did the patient have to apply to the mental health review board for permission to see the records? No, not at all. The patient merely had to file the piece of paper, form 28. If the clinician felt the patient shouldn't see the records, because it would cause harm to the patient or others, for example, there was an obligation on the clinician to apply to the mental health review board, and that is as we had hoped it would be.

It failed to contemplate the situation in which the institution just ignored the law, just ignored the request. The patient might think, "If you're going to ignore my request, I'll go to the review board and see what it says," but there's no authority under the Mental Health Act for the patient to apply to the review board if the hospital is simply ignoring the request, in contrast with FIPPA, in which the commissioner has an enforcement role and can audit compliance with the act. So I'd say yes, basically, to the Mental Health Act model, but it would also be desirable to include or continue the commissioner's role in enforcement.

**Mr Wessinger:** I think Mr White wants to use up the rest of our time.

**The Chair:** Mr White, you have a question.

**Mr White:** I hope, Mr Chair, I will be able to continue with a question or two?

**The Chair:** You have two minutes, so start your speech.

**Mr White:** With no interruptions? Thank you.

I wanted to ask a couple of questions. You have a great deal of experience with people whose boundaries are not always clear. What's appropriate and what's not appropriate in terms of requests is not always clear with your clients, so I would think you would be the ideal person to respond to a couple of issues that have been brought up during testimony. The issue you brought up of repeated, sometimes frivolous, requests you have a couple of responses for. You're suggesting there should be a nominal fee even for personal information, though, whereas most of your clientele would have very limited financial resources.

**Mr Giuffrida:** The authority would continue to exist for the head to waive the fee. That is one opportunity to minimize the burden of even a \$5 fee on legitimate requests. Also, the point has been made that it can be more expensive administratively to process a small amount of money coming in than is worthwhile, so I suspect that when the requester is a person on income maintenance it may be fairly routine to waive the fee, but for requesters who are inclined to make 10 or 20 requests, you might regard that differently.

**Mr White:** Sure. Second—

**The Chair:** I'm sorry, time is up.

**Mr White:** You said two minutes, Mr Chair.

**The Chair:** Five minutes per caucus.

**Mr Elston:** I have a couple of questions that revolve around both the fee and "frivolous." Is it your feeling,

David, that perhaps we ought to try the fee as a way of dealing with frivolous and vexatious requests before we amend it to give the head the decision?

**Mr Giuffrida:** I hadn't really prioritized them.

**Mr Elston:** I know you hadn't, but the strength of your argument about fees, it seems to me, would deal with some people who say, "It's free, so I can just beat these people to death with my claims."

**Mr Giuffrida:** It's certainly the case that some of the suggestions I've made relating to fees would address to a significant degree the same concerns that a "frivolous and vexatious" clause would.

**Mr Elston:** And if you were being cautious, perhaps we might try that before we gave the unfettered discretion, would you say?

**Mr Giuffrida:** To whom?

**Mr Elston:** To the head.

**Mr Giuffrida:** I wouldn't give the unfettered discretion to the head. I would permit the head to apply to a more detached organization, such as the commissioner.

**Mr Elston:** But in order to make the case, presumably you're still consuming resources, time, energy and whatever to make that application.

**Mr Giuffrida:** Yes, and that may help ensure that it is confined only to extreme cases.

**Mr Elston:** I'm interested in the issue of access to others' files. You mentioned that 80 people had made application. I presume those would have been in relation perhaps to allegations of improper care being provided or claims within the hospital administration. How do you balance that right to know what has been alleged, because in fact it does happen, when at the same time you can't say there will be absolutely no access to another record when it means a person may be disciplined, lose pay, lose a job?

**Mr Giuffrida:** That's an excellent question. Certainly we advocate fairness for our clients and fairness for others as well. A staff member who has been accused of unprofessional behaviour has a right to know the allegations he or she has to meet. But if that staff member has to respond to those inquiries, it's because the patient has not only gone to the advocate; the patient has also gone to the hospital administration, to the employer, and at that point the employer has that information and the employee can get that information from the employer.

But at times a patient will talk to an advocate and unburden themselves of a concern about the way they've been treated by a staff member but not instruct the advocate to tell anyone. There the information just stays in the advocate-client file and cannot prejudice the employee. In that case, I don't see a fairness argument for the employee being able to look in the advocate-client file. If it gets to the employee's employer, then they can get it from the employer.

**Mr Elston:** I agree with you, except that where there is evidence to an advocate from a patient about a person allegedly mistreating them, there's a different attitude surrounding the relationship that goes on inside the hospital. It may very well stay there as it relates to a



formal circumstance, but informally the situation may take a different turn, particularly if you're dealing with supervisors who are in charge of—

**Mr Giuffrida:** If I were to balance the importance of maintaining the integrity of advocate-client files against the risk that a staff member worries the patient advocate feels ill-inclined towards them because of something the patient might have said, I'd err on the side of maintaining the confidentiality of the files.

**Mr Elston:** Good advice, but it's necessary to ensure that when we make a recommendation like this, some don't perceive us as changing the balance, or at least as clandestinely doing something to that individual's right to continue with employment.

I'm interested in two or three areas, because you've given us some very good suggestions here.

How do you as an advocate know what your patient needs to know for her or his own satisfaction? It goes to the question of including hospitals at some point. We've already discussed that on a couple of occasions. How do you know what is actually needed, how do you know what is actually understood in those clinical records, and how might we understand that also of a cardiac patient, for instance, a bypass patient or whatever?

**Mr Giuffrida:** I understand that philosophically under the freedom of information act the requester does not have to assert why he or she wants to know it. It's enough to say, "This is about me and I want to see it." Most clinical records departments want to physically preserve the files, so they have someone standing there when the requester is flipping through it. If that person has some clinical knowledge, they can help interpret medical phrases as well, or the attending physician, the author of the record, could be present to explain it.

1140

**Mr Sterling:** When this act was originally passed, I had suggested in an amendment to the original act that the institution or agency be allowed to strike its own fee structure etc, and that there be a "reasonable" clause associated. In retrospect, after hearing evidence for a couple of days now, I think there's a lot of sanity in that kind of clause in that the fees you may require in order to respond are very different from police forces, very different from municipalities. If we widen the scope of this act, which there is some talk of, to deal with hospitals and other social agencies, for instance, it seems to make eminent sense to allow the particular agency to strike its own fee schedule so (a) they're not making money but it's a cost recovery kind of thing, and (b) that it's reasonable; that you leave it at that and let the agency come to some agreement perhaps with the commissioner. What do you think about an approach like that?

**Mr Giuffrida:** First of all, as we're a quasi-independent program of the Ministry of Health but a part of the ministry for all financial considerations, that means that when a fee is charged to a requester, our program budget does not increase by that amount; it goes to general revenue, so it doesn't even end up defraying our costs.

My concern is to not allow individual institutions to unilaterally and without external oversight set their own

fees because of the almost irresistible temptation to set them prohibitively high as it's just such a darn nuisance to process these requests. Where public hospitals have been permitted to set their own fees for photocopying, they have been prohibitively high. I could contemplate something in which an institution would have to persuade a neutral body of an appropriate fee schedule, but I can't imagine leaving it exclusively to the institution to set it.

**Mr Tilson:** Following that line, the issue of fees is cropping up in almost all the delegations that have come before us. It appears to be for two reasons. One is to try and discourage frivolous claims, and the second is to recover some of the great cost. I don't profess to be completely knowledgeable about these bills, although I am as I'm sitting through these meetings, but one of the areas that hasn't been canvassed, particularly by legal people, is the subject of costs. There doesn't seem to be anything in these pieces of legislation that enables someone to award costs specifically against those who make frivolous claims.

There was a time when the Ontario Municipal Board rarely, if ever, awarded costs. For example, if someone applies for a subdivision or a development and the opponent, who wants one across the street, applies and appeals that to the Ontario Municipal Board for quite frivolous reasons, now the municipal board is starting to award costs more and more. I'm thinking of yet another alternative to recover costs. If people like the hospitals and the municipal people and others start setting their fee schedule, I fear the whole system's going to become prohibitive, yet you've got a serious problem with frivolous claims. Have you ever addressed your thoughts to whether the commissioner or someone independent should have the ability to award costs specifically in frivolous claims?

**Mr Giuffrida:** A token analogy to the scenario you pose is the courts, where there is the—

**Mr Tilson:** No, it's not; some group such as the courts or the commissioner or someone who's independent.

**Mr Giuffrida:** Classically, it's been the courts that have had the authority to award costs against the unsuccessful party and, to a much more limited extent, administrative tribunals, and you just gave us one example. But these are all in judicial or quasi-judicial proceedings, so under the freedom of information act, that scenario doesn't exist until a party appeals to the IPCO.

I don't know that I would support that, because the spectre of having to pay the costs of the successful party can be such a significant deterrent. It's one thing to allow it between commercial interests that are litigating and another to say to a private citizen who really wants to see what the government has about them, "If you take it to the IPCO and lose, you could have to pay thousands of dollars in the other side's legal costs." I don't know that we need to include that in order to deter frivolous requests.

**The Chair:** Time has run out. Thank you for coming before the committee today with your presentation.

*The committee recessed from 1146 to 1404.*



## WELLINGTON COUNTY SEPARATE SCHOOL BOARD

**The Chair:** We will resume the review with the Wellington County Roman Catholic Separate School Board. We have a half an hour. Welcome to the standing committee on the Legislative Assembly. You may begin.

**Ms Jane Rose:** Thank you. First of all, I'd like to introduce myself. My name is Jane Rose. I'm from the Wellington County Separate School Board in Guelph and I'm here today to bring to your attention some of the inadequacies we've found in trying to administer the access to information provisions under the act.

Our board supports the spirit of this legislation; however, there do appear to be a couple of loopholes in the act, which have been to the advantage of groups requesting large amounts of information.

I would like this panel to address two issues:

(1) A recognized and identifiable group acting as one body is able to break down a request for a large amount of information into small requests, submit individual requests, and thereby avoid the applicable fees.

(2) Subsection 20(1) of the act allows an extension of the 30-day time limit when a large amount of information is requested. However, there is no provision for an extension of this time limit when the requests are received from a group in the form of individual requests.

The following will give you some insight into the problems our board has experienced.

A group of people, who call themselves the Coalition for Responsible Catholic Education, was formed by members of the public who are opposed to our board's decision to close one of our high schools which was 135 years old. This coalition has been very active in their goal of keeping the school open.

In March 1993 our board received five requests from individuals for large amounts of information. The board responded individually to these requests and costed them accordingly. There was a lot of information that they required. The total number of hours to locate, sever, prepare and photocopy the information was calculated to be about 200 hours and would cost approximately \$6,000. When we replied to the requesters, we did send them a certain amount of information to show goodwill and we certainly weren't opposed to giving them the information.

On April 20 and 21 three more requests were received. Two of these requests were granted access with no charge, the third was costed at \$90 and we never heard anything about that one again.

Here comes the interesting part. On April 27 the board received a letter from an individual representing the coalition. This letter stated the five requesters were member of a coalition of approximately 100 individuals and they asked our board to waive the fee of \$6,000.

It was stated in the letter, "If necessary our group is prepared to produce the required 100 names and send them to you to back up the five requests." The board replied to the effect that it was not prepared to waive the fee. An article the coalition published in the local Guelph Tribune, just a local little newspaper, claimed the group had raised \$30,000 for its cause, so we really felt that

waiving the fee wasn't an issue because they weren't in financial hardship.

The coalition then proceeded with the following action. In July 1993 the board received an additional 22 requests. Now, this time each request related to the original five. However, the requests were now broken down into small items to take advantage of the two hours' free search time.

I contacted a policy adviser at the freedom of information office in Toronto for advice on how to proceed with the situation. I was advised to treat the latest 22 requests as one and cost them accordingly as this was an abuse of the intent of the act.

Just to give you an example of how we feel the group has attempted to take advantage of the current legislation, one item in the original request requested the expense accounts of all board employees from 1989 to present. Well, all board employees, that's about 500 people. To get that kind of information prepared was, I don't remember the figure, but it was quite a substantial amount.

After our board refused to waive the fee, we received 19 individual requests for the expense account of the director of education, but this time it was broken down per month, like May 1991, June 1991 etc. Again, these requests related to the original request but were now broken down to avoid the applicable fees.

## 1410

It would appear that these requests are from the members of the Coalition for Responsible Catholic Education, and the reason I say that is that the requests have several similarities: The envelopes display the same handwriting; each letter is in the same format; material requested is the same as the original five; the requests were hand-delivered by the same person at approximately the same time of day; the names of the requesters were published in the school yearbook, identifying themselves as members of a coalition; and also the names of the requesters appear on a legal matter between the coalition and the board.

Based on the April 27 letter from the coalition, the separate school board anticipates it will receive approximately 100 small requests to obtain information which was originally estimated at \$6,000. Individually, this information can now be requested free of charge.

In order for our board to comply with the current legislation, we must process these requests within a 30-day period, virtually free of charge. Compliance with the legislation will be extremely disruptive to the operations of the board and will also have severe financial implications.

Our current situation is this. Six individuals appealed our decision to treat the requests as one, stating they were requesting the information as individual members of the public. The appeals officer at the freedom of information branch stated there was no provision in the act to support our decision to treat them en bloc, and therefore we were advised to treat each request individually. He did, however, agree this was a loophole in the act which they were taking advantage of. Five of the appeals were settled



at the mediation stage to the advantage of the requester and one request was denied under section 14.

We consider the coalition's attempt to avoid payment of fees is an abuse of the intent of the act, harassment of our organization and extremely time-consuming and costly to our organization. Thank you for hearing our concerns.

**Mr Steven Offer (Mississauga North):** Thank you very much for your presentation. I was wondering just before I ask some more specific questions, if you might be able to share with the committee an indication as to how many requests the Wellington board may have received over the time period with respect to freedom of information, apart from the specific issue that you bring forward.

**Ms Rose:** None, until this came forward.

**Mr Offer:** I see. Now, we have heard some presentations from other deputants which spoke to the issue of fees. I know there are probably two issues that I see here: Firstly, the issue specifically of fees and the right to charge fees and the scope and the amount that can be charged; secondly, if applications can be melded together and whether the legislation should provide a process for that to take place.

I am wondering if you could share with us, because on the issue of fees, we have heard a variety of presentations and I think it's fair to say that many people feel that there is an issue that there should be a little bit more discretion to be able to charge a broader scope of fee. I am wondering if you might be able to share with us your thoughts on that, recognizing that your board has had only one issue, granted it's a large one, but one issue.

**Ms Rose:** I really have no problem with the way the structure of the fee works. The fact that this group has been able to take advantage by withdrawing the original request, breaking it all down and now getting it free of charge, when we know it is the same people, I guess my thought on that was that the two-hour free search time seems to be a little loose—maybe if it were reduced to one hour and we had the opportunity of charging people. I guess the bottom line is our board is not in a position to process all these individual requests with no financial benefit—or not benefit, but reimbursement—and the way the act is set up, they can do that.

**Mr Offer:** Keeping in mind the particular issue, you would be supporting a reduction in the availability of free search time and a broader area of fees to be charged.

**Ms Rose:** Or being able to group the requests together when you can prove that it's from a massive amount of information.

**Mr Offer:** And on that issue, have you thought about what would be the criteria to group particular requests? In your example, when you have one issue in mind, one might more easily be able to draw certain criteria, but when one is looking at legislation which will apply to everyone, are there some ideas or thoughts that you could share with the committee as to what some the criteria might be in order to accomplish this grouping?

**Ms Rose:** I really haven't given it an awful lot of thought. When one request is submitted, then withdrawn

and then resubmitted, I think there could be some provision in the act to stop that happening.

**The Chair:** You've got one minute.

**Mr Offer:** I'm just thinking that if that were the case, then that might not necessarily address the problem which you have brought forward, because people just wouldn't have brought forward the issue as one whole at first instance. They would have brought it in chunks and clumps. I'm just wondering again if there are any facts or factors or criteria that we might be able to identify.

**Ms Rose:** Just, in our case, if we were able to present to you evidence that these were from a group of people, then the act should allow us more time to process the information without any kind of penalty and also we should be able to recoup some of the time, if we can prove to you.

**Mr Offer:** Okay.

**The Chair:** Welcome to the committee there, Mr Arnott, and you're up for a question.

**Mr Ted Arnott (Wellington):** Thank you, Ms Rose, for your presentation. Listening to it I think that I can say that I would give unqualified support to what you're saying. Your brief is constructive and helpful to this committee. I think we all recognize that people and individuals in groups have a right to pertinent government information, but that right should not be abused.

Clearly the situation that you've defined, I think, here would be to most reasonable people an abuse of the intent of the legislation, outside the intent of it, and certainly the potential exists for groups and individuals to make mischief within an organization such that your normal business becomes disrupted. I would strongly urge the committee to give very careful consideration to putting forward a suggestion to the Legislature to clean up the act with respect to the suggestions you've made.

**Ms Rose:** Thank you.

**Mr Tilson:** Ms Rose, your comments with respect to frivolous claims are certainly a pattern of different delegations that have come before us and the concern of—well, we had a police delegation, we've had municipal delegations and school board delegations—I can't recall whether you're the first or not, but it's obviously a common problem. We're having almost professional obstructionists who are out to cause havoc with institutions, and I understand that problem.

The suggestion has been made for fee structures and that may be an alternative, and that's really, I think, what you're suggesting as well, that there be some form of fee structure, a different schedule, depending on what you're doing, the number of hours spent, shortening down the two hours to one hour, that sort of thing.

The only hesitation I have with that is, and it may well be that's the only solution, the issue of are we really generating income, because governments in the present and the past, municipal or provincial, have obtained the reputation of using fees as a generator of income. I gave the example to a delegation this morning of snowmobile licences and sheriff's certificates and—I don't know what fees school boards charge for information or for certified copies of documents, but the fees for birth certificates



have jumped twice, I think, in the last six months.

1420

It's becoming very suspicious. That's the fear I would have, that institutions, whether they be school boards or municipalities or provincial governments or agencies, would use this source as a cash source for dealing with other issues. Have you got any comment on that fear?

**Ms Rose:** Only going back to the two hours, I don't think it has to be two hours. An awful lot of information can be retrieved within an hour. I think that would be a good compromise. They get maybe one free hour and after that—but two hours, that's a lot of information free.

**Mr Tilson:** I guess there are problems as well that there are people who are genuinely looking for information, they feel they're paying administrators to provide a service and now they're going to have to pay again.

However, if I could move on to another area, which you did not deal with in your presentation and it may be unfair because you didn't, and that has to do with the availability of salaries of school board—everyone from administrators down.

The concern of many is the subject of accountability. Not just for salaries, but perks, whether it be for directors of education—directors of education do get perks, some directors get car allowances. We don't know, we as taxpayers don't know. You, working there, may not know unless that person inadvertently tells you. Privacy is one issue but accountability is another.

It may well be you haven't been instructed to talk on that subject. But as someone that works in an educational system, do you have any thoughts on that issue?

**Ms Rose:** From the first request we received, and we've actually received 32 in total, and I've met with the trustees and administration, the general opinion is that no one has anything to hide; everyone has been more than happy to supply me with the information. I have all the information that has been requested sitting in my desk ready to go.

**Mr Tilson:** If you don't get the permission of that person, you're going to get sued.

**Ms Rose:** No, it's ready to go subject to the requester paying the applicable fees.

**Mr Tilson:** No, that's not my question. My question has to do specifically with the release of remuneration and everything that's connected with remuneration.

**Ms Rose:** No one has a problem releasing it. Everyone has been, "Let's give it to them."

**Mr Tilson:** You have no problem with the legislation being amended to making that law?

**Ms Rose:** No.

**Mr Mike Cooper (Kitchener-Wilmot):** Like Mr Tilson, I want to address a couple of things that you didn't address.

Refresh my memory, but the Wellington county public school board has done a lot about violence in the school yard. Were you involved in that?

**Ms Rose:** No.

**Mr Cooper:** The separate school board wasn't. All

right. This is a fairly large issue that's going on province-wide, and I know the Waterloo County Board of Education is trying to address this right now.

I guess the question is, with them trying to draft up policies and with students being very portable right now because they're moving and going to different schools and their records are following them, about elected officials getting access to these records when they're trying to set up how to secure the schools.

While I realize they aren't responsible if violence happens, it's usually up to the principal whether they would have access, but it eventually comes back to the elected official. So a lot of times an elected official may be asking for these records while they're trying to set up standards. Should they have access to these records when they're formulating their policies?

**Ms Rose:** This is my opinion only: Not until they are finalized.

**Mr Cooper:** Would it be necessary for them to receive pertinent information on individual students? Or should they just have the idea that there are people in the community who are going to be in trouble in school and formulate their policy on that?

**Ms Rose:** Yes, not on the individual students.

**Mr Cooper:** I know even parents have trouble accessing their own child's records.

The other thing I want to go on, I know my son was involved with the University of Waterloo when he was in grade school and he did some psychological tests. I don't know how they were picked for that, but we had the College of Psychologists of Ontario yesterday and they were talking about the tests not being made public. I know we had to sign a waiver on this, but we don't know how these are being used, what questions are answered.

I know one of the things that came up during the review of the provincial freedom of information, things like when the students were asked, if your ship went down and you had a life raft for five and there were six people, which one do you throw off? That was the big thing that made the newspapers.

This type of stuff is still going on in schools, I'm sure, these psychological tests, and we have no access to the questions or the results or how they're going to be used. Do you think the test questions should be made public? I know the colleges say they spend money developing these questions and they shouldn't be.

**Ms Rose:** I don't see why not.

**Mr Cooper:** And the results? Like, we don't know how the results are going to be used and whether they're actually tied in or whether they're tied into a number or an individual person, whether that should be accessible.

**Ms Rose:** As long as it's left very general, that no one is identified. I'm not really qualified to speak on that.

**Mr Cooper:** I realize this is a little unfair, but I just wanted to see if you had some background on either of these, the psychological tests, or whether the elected officials should have access to students' records.

**Ms Rose:** I'll pass on that one. I don't feel qualified enough to give an opinion.

**Mr Cooper:** Okay. I'll defer to my colleague.

**Mr Hope:** I'm going to stay specifically to your brief. I'm going to be a little fairer to your presentation.

**Mr Hayes:** Unlike the others, eh?

**Mr Hope:** Yes, unlike the others.

First of all, thank you for coming. I want to talk specifically about the identification of individuals making application and putting them into organizations, as one who has been along to coalition groups before. I'm just trying to understand whether it's just not the school board or the institution—I'll be fair, the institution getting its back up and being protective—or how you're doing that comparator.

I notice you said about the court challenge and other issues, the same letter and everything else. How are you making that? Because when we talk about—you know, one of the concerns is the frivolous requests that are coming forward, coalition groups doing this. It's part of your second recommendation on your first page which you've put forward to us, and I just need a better understanding. How did you come up with the identification? Even though I could belong to an organization, I could be acting as an individual.

**Ms Rose:** Yes. However, I just have so much evidence—I mean, I have it with me actually. I didn't want to burden you with it. It has been very easy to prove that they are the same people. These people all came together to a service recognition dinner we had and booked a table anonymously and all showed up at the same place. It's really not hard to identify these people, and then they send the requests in. I have absolutely no doubt in my mind that every name ties up with the names in the newspaper.

**Mr Hope:** So what we have to be careful of, I take it, through your presentation today, is that it's not for political purposes.

**Ms Rose:** Not at all. Right from the time the requests came in, I handed them out to the various departments, talked to the director. All the information came back to my desk and it has been sitting there. I sent the estimates out and as soon as that cheque came back it would have gone right out to them. There is no problem with the board releasing the information, none whatsoever. As soon as I have the money, they can have the information.

**Mr Hope:** Did I understand you correctly in the beginning? You said you have not received any requests other than the time that this broke out. There have been zero requests before through the freedom of information and this is the first time, and this is, I'm taking, through written. Have there been oral requests?

**Ms Rose:** A few that were just handled by not treating it as a freedom of information. Maybe they've asked for something like the policy book and we've said, "Well, why don't you come in and read it and make the photocopies." We've sort of said, "You have this option or you can come in and we'll show it to you." Other than that, no, there have been no formal requests other than this group.

**The Chair:** Thank you for coming today.

1430

#### ONTARIO PSYCHOLOGICAL ASSOCIATION

**The Chair:** The Ontario Psychological Association, come forward, please. Welcome. We have half an hour, until 3 o'clock, and please leave some time for questions. As I was looking in the audience there, I saw some of the answers that were coming; some were nodding yes, some were nodding no. So maybe you can give us a little bit more insight to what you've already heard sitting in the committee today.

**Dr Ruth Berman:** My name is Ruth Berman. I'm the executive director of the Ontario Psychological Association. With me this afternoon is Dr Brian Wilson. Dr Wilson is the chief psychologist of the Etobicoke Board of Education, and as well he is the president of the section of psychologists in education within the Ontario Psychological Association. To his right is Ms Linda Bohnen, our legal counsel.

The Ontario Psychological Association is the professional organization of psychologists in Ontario. Formed in 1947, the OPA is committed to advancing psychology as a profession of the highest ethical standards. The OPA represents psychologists in Ontario who practise clinical, industrial/organizational, neuropsychology and educational psychology, among other specialty areas, in private practice and hospitals and in settings such as municipal government and boards of education, which are subject to the Municipal Freedom of Information and Protection of Privacy Act.

When a client receives psychological services in Ontario, those services are provided by psychologists or persons practising under the supervision of psychologists. Psychologists are regulated under the Psychology Act, which is under the Regulated Health Professions Act, 1991. The practice of psychology has been a regulated profession in Ontario for over 30 years.

Among other services, psychologists conduct psychological assessments of the social, emotional, personality and intellectual functioning of clients. Psychological assessments involve observation and interviews as well as the use of psychological tests. Psychological tests are essentially objective, standardized measures of differences between individuals or between the reactions of the same individual on different occasions.

"Standardized" means there is not only uniformity in the procedures of both administering and scoring the test but also that the test has undergone a rigorous and scientifically based development process to ensure that it is a reliable and valid instrument. In order to secure uniformity, test developers provide detailed instructions on the administration, scoring and required secrecy of test items.

Test secrecy is of particular concern, since availability of test items to the public destroys the integrity and validity of tests, rendering them useless. The public relies on psychologists for diagnostic assessments of behavioural and mental conditions such as specific neuropsychological, psychotic, neurotic and personality disorders; and psychologists rely on secure, valid tests to conduct their assessments.



Psychologists have standards of professional practice and ethics regarding test security. Psychologists are required to conduct themselves in a manner which preserves the ongoing security of tests by not providing critical information about a test to anyone who is not qualified to use the test. For example, in litigation situations, psychologists only provide test questions and answers to the opposing party's psychologist unless the judge orders otherwise. The courts have supported this practice in order to maintain test security.

The act establishes a person's right to personal information controlled by institutions, which include municipal authorities and school boards. "Personal information" means recorded information about an individual and includes psychological information. The act provides that everyone has access to a record, or part of a record, held by an institution unless the record or part falls within one of the exemptions under sections 6 to 15.

Sections 10 and 11 of the act set out exemptions of relevance to the disclosure of standardized tests which are part of psychological records. Subsection 10(1) provides a mandatory exemption where the record reveals a trade secret or scientific information supplied in confidence where disclosure could reasonably be expected to cause significant prejudice to a person's competitive position or result in undue loss to a person or result in similar information no longer being supplied to the institution.

Section 11 provides a discretionary exemption where the record contains, among other information, trade secrets or technical information that belongs to an institution and has monetary value to an institution and where the record contains questions to be used in an examination or test for educational purposes.

Although it is possible to interpret the exemptions in section 10 and 11 to apply to test information in a psychological record, the OPA is concerned that the scope of the exemptions, as applied by the commissioner, is too narrow and not sufficient to prevent the disclosure of information which threatens test secrecy and thereby jeopardizes the validity of tests frequently used and relied upon for psychological assessment.

Dr Wilson will now address the specific concerns and recommendations that we're making.

**Dr Brian Wilson:** The OPA has specific concerns about three substantive sections of the act.

First, clause 11(h) provides an exemption from disclosure for a record that contains "questions that are to be used in an examination or test for an educational purpose," and we've underlined "for an educational purpose." The OPA believes that the current wording is not broad enough in two respects.

First, the exemption may not protect information other than questions, even though the information would lead, through deduction or through inference, to disclosure of the test questions. This is especially troublesome in relation to tests constructed and distributed for ongoing and periodic use. For example, the disclosure of a person's marked test answers would lead by inference to the disclosure of the actual questions. This would render the test invalid for further use.

Second, psychological tests are not solely used for educational purposes. Such tests are widely and typically used in a variety of clinical and other applied situations for diagnostic purposes or where evaluations of intellectual, emotional, neuropsychological and social functioning are required.

In this regard, we have laid out a recommendation, that being that the OPA recommends that clause 11(h) be amended to provide the following exemption:

"questions, and information that could reasonably be expected to lead to the disclosure of questions, that are to be used in an examination or test."

The second concern deals with section 23. In the past, psychologists frequently would review a small sample of test items with clients or parents of clients during post-assessment interviews to facilitate their understanding of the test and what it measures.

However, the OPA is concerned that section 23 of the act discourages this practice by stipulating that any access to a sample of the test items or part of the test record would require the psychologist to then provide a copy of the test items upon request. If it was mandatory to furnish a copy of the whole test, this would be a breach of the professional standards of practice and ethics, and the security and validity of the test would be threatened.

This concern regarding section 23 also has been recognized by publishers and distributors of standardized tests. Recently, one of the major distributors of tests has instructed us in Ontario to refrain from describing or visually disclosing any of the test materials to the public, to the clients that we have, or a part of test materials, to prevent this full disclosure of the test under the act.

In this regard, the OPA recommends that section 23 be amended to permit part of a record, for example, samples of test items, to be disclosed orally or visually, without subsequently requiring that a copy of the record, or part of the record, be provided.

Our final substantive concern deals with section 38. Clause 38(d) authorizes a head to refuse to disclose medical information to an applicant where the information could reasonably be expected to prejudice the applicant's mental or physical health. Psychologists are well aware of situations in which it would be detrimental to a client's mental health for complete, unedited information to be given to the client. The word "medical" to describe this information is too limiting and anachronistic in the current health system in which many professions generate sensitive health information about individuals.

**1440**

Our recommendation then is: The OPA recommends that clause 38(d) be amended to change the reference from "medical information" to "health information."

In addition to our three substantive concerns, the OPA has concerns about several provisions in part III of the act, under "Appeal."

Our first concern relates to the means by which affected third parties are identified and given notice of appeals. Subsection 39(3) provides that the commissioner must give notice of an appeal to any other affected person. In our experience, this provision has been applied



too narrowly and passively, with the result that third parties who will be affected by the outcome of the appeal are not given notice and are therefore denied an opportunity to participate in the appeal. Furthermore, it has been ruled that the commissioner has no jurisdiction to entertain an appeal by a person claiming to be an affected party from the failure of a head to give notice to that person before disclosing a record.

Our recommendation therefore: The OPA recommends that subsection 39(3) be amended to place an obligation on the commissioner to ensure that notice of appeal and an opportunity to participate in the appeal is given to all third parties who may reasonably be affected by the outcome of an appeal, including professional associations and professional colleges whose standards of practice and ethical codes may be affected by a commissioner's order disposing of the issues raised in the appeal.

Our second procedural concern involves subsection 41(1). That section provides that the commissioner must conduct an inquiry to review the head's decision in an appeal. The OPA is concerned that the scope of the inquiry is restricted and generally limited to a review of the oral and written representations from parties notified of the appeal.

The commissioner should not expect these notified persons to always provide thorough and complete information and submissions in their representations. In many cases, without counsel or expert assistance, notified persons may not be sophisticated enough to prepare thorough and complete representations.

Further, the commissioner cannot be expected to be expert in the nuances of all appeals. Since commissioner's orders can have profound effects on the persons represented and on many third parties across Ontario who are not represented in the appeal, and since there is no right to appeal commissioner's orders, the commissioner should be required to use independent fact-finding and expert witnesses in appeals.

Our recommendation in this regard is: The OPA recommends that the commissioner, while conducting an inquiry under section 41, be required to use both independent fact-finding and expert witnesses in addition to representations from notified persons to ensure that the commissioner's order is based on the best possible and most complete information.

Our third procedural concern involves subsection 43(3). That subsection states, "The commissioner's order may contain any conditions that the commissioner considers appropriate." We believe this authority should be used in appropriate cases to make it a condition of disclosure of a record to a person that the person agree not to further disclose the record.

Use of the authority for this purpose would recognize that there are circumstances where a particular individual's right to information outweighs the interests of an institution or third party in keeping the information confidential, but where the information should not be communicated to the public at large.

This could apply, for example, to answers to questions given in psychological tests. The individual who gave the

answers may be entitled to see them, but where disclosure of the answers reveals the questions, the individual should be required to agree not to further disclose them.

The concept that a limited group of people should have access to information but that the same information should not be widely published is well known in the law; for example, bans on publication of evidence given at trials even though the public is not excluded from the courtroom.

Our recommendation then: The OPA recommends that subsection 43(3) be amended to clarify that the commissioner may, in appropriate cases, impose the condition on disclosure that information contained in a record must not be further disclosed or published by the applicant.

Finally, in addition to the previous three procedural recommendations, the OPA believes that there should be a right to appeal commissioner's orders. Right to appeal commissioner's orders would provide more scope for review of decisions. Given the powers of the commissioner, there is not enough accountability for the commissioner's orders and this could be attained through the right to appeal.

Our recommendation is that the OPA recommends that the act provide for the right to appeal commissioner's orders.

**Dr Berman:** As the professional organization of psychologists in Ontario, the Ontario Psychological Association has been committed to advancing psychology as a profession of the highest ethical standards for almost 50 years. The public relies on psychologists for diagnostic assessments of behavioural and mental conditions. Psychologists rely on valid, standardized tests to conduct psychological assessments, and through the profession's standards of practice and ethics psychologists are required to protect test security.

Where psychologists are employed by school boards and other municipal institutions, the Municipal Freedom of Information and Protection of Privacy Act impacts on psychologists' ability to maintain test security and threatens the validity of these valuable tests which are used by psychologists throughout North America and in many other countries around the world.

We are here today to ask that the standing committee on the Legislative Assembly consider the importance of both our substantive and procedural concerns with the Municipal Freedom of Information and Protection of Privacy Act and to consider our recommendations to further improve the act.

**Mr Tilson:** Your comment about further appeal from commissioner's orders, what do you mean by that? To the courts? I don't understand what you mean by that. Whom would you appeal to?

**Dr Brian Wilson:** I guess it would be an appeal to the court at that point.

**Mr Tilson:** Can you elaborate a little bit on that page 5, item 4, that you read? I guess my question really is, when would it end? When would the appeal process end? Can you go all the way to the Supreme Court of Canada?

**Ms Linda Bohnen:** The current situation is that commissioner's orders are subject to judicial review



applications on points of law, but not appeal. In particular because of the absence of provisions in the current act that ensure all relevant information is made available to the commissioner and that all affected parties have the opportunity to be heard, judicial review has proved not to be an effective method, in the association's view, to ensure that the most appropriate decisions are made. The hope is that by permitting a broader basis for review of the commissioner's decisions, which might bring before the decision-maker wider viewpoints and more evidence, frankly, better decisions could result.

**Mr Tilson:** It might lead to more litigation too.

**Ms Bohnen:** That's the other side of the coin and it's clear that the intent of this is not to judicialize privacy and access to information. On the other hand, the impact of the commissioner's orders in many cases is profound and in the association's view worthy of the best possible decision-making.

**Mr Tilson:** Thank you. The question with respect to tests, someone from the College of Psychologists of Ontario appeared yesterday—I'm sure you're aware of that—and made representations and similar representations were made by her, the acting registrar, I believe.

What happens if someone wants to challenge a test, for whatever purpose? It may be for litigation; it may be criminal; it may be whatever; it may involve custody. It could be any number of reasons, I suppose, in which a psychologist's report is made and someone doesn't like that test; that individual hires you to give the test in the first place and they don't like the answer and then they go to you to challenge it. You don't know how to challenge it, because you don't know what it was.

What rights are there to the individual who wishes to challenge it? For example, it may well be that the test wasn't performed correctly by the psychologist. There may have been professional negligence. There may have been an omission. If you don't know what the test is, how can you legally test it?

**Dr Brian Wilson:** If, for example, somebody doesn't like the opinions you give, they do have the right to a second opinion, so they can go to another psychologist and ask for that second opinion.

With regard to the test, if they wanted to obtain copies of the test and the test questions from the first psychologist who rendered the opinions, then that first psychologist is obligated under our standards of practice to provide the test and the test questions and the answers to the second psychologist.

1450

**Mr Tilson:** But only to a psychologist, not to an individual.

**Dr Brian Wilson:** That's correct. It would be up to the second psychologist, whom the client has asked to look at the situation, to render an opinion to the client on whether that was done correctly or incorrectly or whether they have a different opinion.

**Mr Tilson:** So if we got into challenging something in court, for example, are you telling me those tests could never be made available in the courts, the questions?

**Dr Brian Wilson:** No, I'm not saying that at all. No.

**The Chair:** I have to go on to Mr Cooper.

**Mr Cooper:** Thank you for your presentation. We went through this in 1991 when we were doing the previous review, and I think you heard my previous line of questioning for the school boards. There was quite a bit of wrestling in the committee about who would have access to the psychological testing of students when it's in their file. Do you have any more views on that from what we went through at the provincial level?

**Dr Brian Wilson:** All I can say is that, for example, in school boards, which is what you were asking earlier as well, the actual tests themselves, the test protocols that are copyrighted, do not go into the student's record; they do not go into the OSR. What goes into the OSR is the interpretation of the test of the psychologist or the person working under the supervision of the psychologist. The test protocols themselves are kept in a confidential psychological file. What the reader has, the people in the school, is simply an explanation, an interpretation, of the results. The test themselves are protected.

**Mr Cooper:** And what about the part about elected officials having access to that record?

**Dr Brian Wilson:** Which officials are you referring to?

**Mr Cooper:** Basically, school board trustees, but we've also been talking about the municipal level, whether municipal politicians would have access to certain information.

**Dr Brian Wilson:** When you say "information," are you referring to the actual test itself, the questions?

**Mr Cooper:** No, the results of the test.

**Dr Brian Wilson:** The results of the test, the things that are in the OSR, for example. Well, my opinion is that those test results belong to the client, and in the case of school boards, the client is the student, the learner, and the parent of that learner. It is they who can govern or determine where that information goes. They are always given a copy of that information, by the way; it's not as if it's just put in a file somewhere. If they choose to share that information, that's certainly their right and they could do so, but the information contained, say, in the OSR is obviously protected by the regulations associated with the OSR.

**Mr Cooper:** In general, there's been talk about MFIPPA being extended to the children's aid societies and hospitals. What are your feelings on that?

**Dr Brian Wilson:** That rights to access of the OSR be extended to those?

**Mr Cooper:** No, that we bring in MFIPPA to cover hospitals and children's aid societies, expanding it.

**Dr Brian Wilson:** That's difficult for me to comment on.

**Mr Cooper:** For hospitals, I guess, is where it would affect you.

**Ms Bohnen:** May I comment? From the perspective of psychologists and other health professionals, if that action is taken it will raise complex issues of confidentiality of health information, because that information is, by and large, the most sensitive kind of information we

generate in our society. For that step to be taken, I think particular attention would have to be paid to ensure that it is protected, and the right of individuals to be protected from their own information where it will damage them has to be assured as well.

**Mr Cooper:** So would the one recommendation where you talk about changing it from "medical" to "health" cover it? Partly? Almost?

**Ms Bohnen:** Certainly that's a necessary amendment even if the scope of the act is not extended beyond the current municipal institutions. It would be all the more essential if the scope of the act were extended to cover hospitals, children's aid societies and other institutions.

**Mr Cooper:** Thank you. I'll defer to Mr White.

**The Chair:** One minute, Mr White.

**Mr White:** One brief question: We had the discussion yesterday from the College of Psychologists and what you mentioned, Ms Bohnen, the protection of an individual from information about themselves. I'm a little concerned about that. This morning we had the patients' rights advocates, who work with psychiatric patients in Ontario facilities, stating that that's never been a concern throughout the duration of the provincial act being in place. I'm wondering why this would be cited and what the position of the psychological association is; how it's determined that information might be detrimental to an individual, that no other body seems to find potentially harmful than your solicitor.

**Dr Brian Wilson:** I can answer that question with reference to within a school system, for example. We always—and I'm sure all my other colleagues do too—go to great lengths to try to convey as much information to the client as possible, to the student, to the family. As we make reference here, we even to a certain degree would show them samples of the test; to a parent, for example, if we're working with a student. We would show them samples of the kinds of things we do in order that we feel they're informed the best we possibly can about what we've done with the student and what it means. Of course, it's what it means that is the most important part: the interpretation of that test.

**The Chair:** Okay, Mr Elston.

**Mr White:** I think I got cut off.

**The Chair:** No, I was keeping watch.

**Mr Elston:** I have a couple of question. Has there been a decision that has offended the psychologists? I just came back—I'm late coming back in—but I notice that there is a substantial amount of information from a legal firm in Virginia. We've had the College of Psychologists. We've got the association of psychologists. What decision is it that has caused you problems?

**Dr Berman:** There currently is a situation involving a particular school board, where a request and an order was made by the commissioner with respect to releasing of some test information to the family of a child who had been tested for a particular purpose. There is a commissioner's order and there has been a request for a judicial review. Because of that particular situation and that particular order having been made, we are very concerned about that setting a legal precedent.

The interest you mentioned of some Americans attests to the fact that the situation we're finding ourselves in, where the security of standardized psychological tests could be in jeopardy, is not an issue that's of concern to that particular board or to Dr Wilson's school board or any school board: It is a concern to the profession at large.

These tests are used not only in schools; they're used widely in a variety of clinical situations, the same tests used throughout North America. Many of them have been restandardized and translated in other countries. For example, the standard intelligence test is the benchmark for the assessment of intelligence literally throughout the world. That's why you have a submission from the Association of Test Publishers. Many of these tests have undergone painstaking development, much of it taking a period of several years.

**Mr Elston:** I wish as a member of the committee that you'd just come in as a group and said, "Listen, we believe there's a bad order out there, and that's why we're making a presentation," as opposed to us having to find out about it. It really sounds to me like you're using this committee as an appeal mechanism—

**Dr Brian Wilson:** Not at all.

**Dr Berman:** No.

**Mr Elston:** Well, that's what it sounds like. First of all, you've said today that the commissioner's authority has to be prescribed because the orders are not made in the best interests of the public and that as a result you need some other court avenue to appeal his decision, that judicial review is not effective. That's what has been said. I ask myself the question I just asked you: Why are all these psychologists all of a sudden here?

1500

**Dr Berman:** We're saying that the legislation is written in a way that does not speak to the issue of psychological tests. That would be the case whether this particular order existed or not.

**Mr Elston:** I suspect you wouldn't have been here if that order hadn't been made, though.

**Dr Brian Wilson:** Except that we have had few concerns with the act. This brought it to our attention.

**Ms Bohnen:** If I could also add, the procedural recommendations that have been made do partly arise from the fact that this association, other school boards, test publishers, are not parties to the judicial review application because they were not given notice of the potentially affected parties. So it's not the case that the judicial review application will be an effective remedy in this situation.

**The Chair:** Mr Elston, time has run out.

**Mr Elston:** That was five minutes?

**The Chair:** No, about four minutes.

**Mr Elston:** Well, you gave them five.

**The Chair:** No, everybody got four minutes. Sorry, Mr Elston.

**Mr Hayes:** Drummond has been cut short.

**The Chair:** Yes, he's been cut short every time.



Ladies and gentlemen, thank you for coming before the committee. If Mr Elston has another question, maybe he can catch you at the back of the room before you leave.

**Mr Elston:** It's not on the record.

**The Chair:** The researcher has an explanation on the next exhibit that has been handed out.

**Ms Susan Swift:** The clerk has just handed out copies of the British Columbia Freedom of Information and Protection of Privacy Act. The committee requested that after there was much discussion from the Information and Privacy Commissioner and Management Board on this statute. The statute has been amended and the amendments are attached, and a schedule of the proclamation date for the bill appears at the front of the exhibit.

#### CITY OF THUNDER BAY

**The Chair:** The next group is the corporation of the city of Thunder Bay. Welcome. I guess that was a long trip. People have problems coming even, say, six blocks to Queen's Park with the weather we've had down here, which I guess isn't unusual to you in Thunder Bay.

**Ms Evelyn Dodds:** No. I guess we felt pretty pleased that you're only about five degrees warmer than we are.

**The Chair:** Please identify yourselves and the position you hold, and you may begin. We have until 3:30.

**Ms Dodds:** Thank you. My name is Evelyn Dodds, and I'm an alderman with the city of Thunder Bay. The brief that is before you was supported by council resolution of the city. With me is Riccardo Simeoni, who is a welfare eligibility review officer. In that capacity, he is responsible for investigating the reports of suspected welfare fraud that come to our attention.

I find it odd that I should be presenting this particular position to you today because normally I am very firmly on the side of the individual against the power of government to intrude in their lives. Unfortunately, whenever there is a system which confers benefits upon individuals, I'm afraid that liberties have to be diminished in that the public right to be protected in the expenditure of public funds has to take precedence.

It has been clear to me in the past two years in reviewing the activities on the welfare fraud issue within the city that the freedom of information act has contributed in some considerable degree to the difficulties that face social workers when they are trying to assess a person's legitimate eligibility and when they are trying to investigate suspected fraud, which would lead to criminal prosecution.

The position of the city of Thunder Bay is that welfare is too costly to administer, too difficult to monitor and, at the moment, is ridiculously easy to abuse. It is impossible to discuss only the freedom of information act, because its impact within the welfare eligibility systems is so intertwined with all of their procedures that you need to understand how welfare eligibility is reviewed in order to understand why the freedom of information act has made it worse.

The first point I make is that there are far too many eligibility-related forms. Your appendix lists the titles of 99 of those forms. I would like to offer for the committee that we did not copy all 99, but I did bring you a sample

of each. There are 99 forms that our welfare department has to keep stocked regularly in its bins to access, more than 40 of which are the direct result of the FOI.

In contrast to this, I did attend in the offices in Winnipeg, Manitoba, the investigative unit there for their welfare fraud. In their bins, I think there were about 25 of them. They have found very simple ways of administering their FOI within welfare administration. I think the government, in several of its departments, would be well advised to have a look at what other provinces are doing.

Numerous consent forms must be signed by each applicant. We don't have a system at the moment where the FOI permits the welfare departments to simply take one blanket authorization to verify information. Numerous forms must be signed. When the supply runs out, workers have to get the welfare recipient back in to sign more. Agencies will not accept photocopies, even if they are stamped as true and certified copies.

Each agency, even agencies run by the same government, have failed miserably to adopt standard practices. You see here before you UIC, CPP, WCB, immigration, OSAP, children's aid; they have all developed their own paperwork. They all require separate signatures, separate filings and separate processes, which has added enormously to the cost of running welfare departments.

Revenue Canada will provide absolutely no information even with the consent form unless a criminal charge is laid.

Applicants can continue to receive welfare benefits even if they refuse to sign a consent. A welfare worker assessing someone's eligibility can deem a person to be ineligible if they refuse to sign the consent form, but it is a very simple matter for an individual to go down the road to a legal clinic and to file an appeal, and the SARB board usually issues an interim order to pay. Since it takes up to six months for SARB to review an application, someone who has refused to sign a consent form can be receiving welfare all that time. When the SARB review is complete, even if the position of the department is upheld, the moneys paid are unrecoverable. It has become a neat way of getting six months' income without any justification.

As you know, the system for ascertaining if applicants are receiving welfare elsewhere, even in Ontario—in our case, even in the adjoining townships—is totally unreliable because there is no consistent computerized database that is accessible.

Again, I would refer you to the Manitoba experience, which I personally visited and which I consider to be highly superior to anything that Ontario has. They have, without any fuss, managed to set up databases so that they know, the moment someone applies for welfare, whether they are receiving any benefit funded by the government or by the federal government anywhere in the province, and they are in the process of expanding their databases to the other western provinces.

But as I was told by the head of their unit, "Our database and our ability to check stops at the Ontario border," which is unfortunate. We've had experiences in Thunder Bay with people receiving welfare simultaneous-



ly in Winnipeg and in Thunder Bay. With no exchange of information, it's impossible to catch it. Any steps that Community and Social Services takes to improve the systems is automatically going to involve the FOI. They're going to have to work together to change the systems, because one cannot change without considering the other.

Hiding bank assets is relatively simple. The banks generally cooperate if they are given the consent form, but of course the most common kind of welfare fraud that we have detected has to do with unreported cohabitation or the "spouse in the house" situation. The banks of course will not give you any information on this alleged spouse because that person, as they weren't a reported person, has not signed a consent.

People who have virtually no identification can be given welfare. They can simply say they don't have any identification and, provided that the information they submit qualifies them under the financial rules, they can receive income. I don't think that should be.

Many social benefit recipients do not file income tax returns, or claim they don't. That poses a problem.

Support payments from other parents cannot be sought if the applicant parent refuses to disclose who the other parent is: "I don't know who the father is," or "I refuse to tell you," and that's that. You cannot go after the support payments from the other parent.

Applicants can very easily claim, falsely, to be supporting dependent children. Particularly in these days of movable families, it's extremely easy for several families to each claim support of the same children. Unless home visits are possible—and today's budgets do not normally permit a lot of home visits—it's an extremely difficult situation to find out about.

1510

Field workers cannot request income information and verification pertaining to other adults who live in the same household unless a legal relationship or a common law spousal relationship is voluntarily declared. That is not the person whose name is on the welfare cheque; therefore we have absolutely no way of getting information from that person or by that person.

The definition of "cohabitation" is obscure. I'm amazed that we continue to make laws that include in their application some definition of "family," because there is no definition of "family" that I'm aware of that is consistent or that can be applied to these laws. If we insist that we're going to calculate someone's eligibility for a benefit on the basis of family income, I think we'd better get about the business of designing a commonly accepted definition of "family," which at the moment doesn't exist.

Welfare payments that are made at the same time that other awaited income applies retroactively are costly to recover: "Give me welfare now. I have a lump sum insurance payment coming in two months." For some reason, we have not put the onus on the welfare recipient to repay the welfare paid, even though the insurance payment may have applied retroactively, or UIC or WCB.

Landlords are frequently victimized because of the

FOI. If they have a welfare tenant who does not pay the rent and then leaves, even though a portion of the welfare cheque is calculated to include a shelter subsidy, once that welfare tenant leaves and goes to another location, the welfare office is prevented under the FOI from telling the landlord, even if he has a court order, where that person has moved to.

I've had many calls from landlords asking me to find out where that person went: "I have a writ. The sheriff is ready to deliver it, and your social workers won't tell me where the person moved. Did you not give that person welfare in order to cover their rent?" I say yes. They didn't pay it. It should be fraud, and the FOI should not be assisting in the victimization of landlords.

When it comes time to investigate fraud—and I do insist that any receipt of public moneys under false pretences is a criminal offence indictable under the Criminal Code, and I would like you to have a look at the statistics our department has summarized for you—our efforts to research and to follow up and investigate and prosecute welfare fraud as reported are only recent, only a little over a year, and yet we have already found that the incidence of fraud is far greater than was previously suspected. We've already recovered significant amounts of money and we've put, I think, eight people in jail so far.

Mr Simeoni will review the statistics with you so that you can better understand them.

**Mr Riccardo Simeoni:** In Thunder Bay, we have an average case load of family benefits and general welfare assistance of approximately 4,800. That's been ongoing since June 1992 to September 1993. Of those 4,800, the social services department received during that time period 547 complaints of alleged abuse. Those complaints were dealt with by the case worker, social worker. They may have made some changes in the budget or whatever or they may have referred it to us. Of those 547, 365 cases were actually referred to the eligibility review unit to be investigated.

If you look at 547 cases, that represents 11.4% of our case load. The ones the review unit looked at were 7.6%. As of September, we still were backlogged by 139, but of the 226 we reviewed, in 102 of them there was no misrepresentation found; however, in 124 cases of the 226 we looked at, or 2.6% of our total case load, there was abuse, abuse that we dealt with. There may have been abuse prior that the worker dealt with, but it wasn't, in the worker's opinion, referable to us.

Of those 124, almost \$1 million of overpayment has been input, or 2.6% of our case load. Of those 124 that our unit looked at, 87 have been referred to Thunder Bay Police for criminal charges. In the remainder, we put an overpayment in and referrals to police were not appropriate. Of those 87, in 82, or 1.7%, criminal charges have been laid. Of those 82, to September 1993, in 32 we have registered convictions in court. As Ms Dodds has stated, up to two years' sentence was the highest. Presently, we have approximately 50 pending through the courts in Thunder Bay. Of those we sent to the Thunder Bay police, five were returned to us or there was a not guilty finding in court.



**Ms Dodds:** I think the thing to note is that there are two kinds of fraud, and we are able to investigate and prosecute only one kind. There is visible and invisible fraud. Almost every case you have in front of you is of the visible kind of fraud, where some circumstance in a living arrangement tips off the neighbours and relatives that there has been misrepresentation.

The invisible kind of fraud is double-dipping, where a person can be receiving WCB and welfare. We have virtually no way of detecting that, virtually no way, so very, very few of these investigations and convictions deal with the invisible fraud. In Manitoba, almost all the cases that they prosecute are the invisible fraud because they rely almost exclusively on computerized forensic auditing techniques to pull out double-dippers. Because it's a low-profile activity in Manitoba, they receive very few reports of the visible kind.

I very much suspect that if we were catching all fraud and if the courts weren't so slow, the figures would be well in excess of double what we have already managed to detect and prosecute.

We cannot check, even when fraud is suspected, which is a criminal charge. Even when we suspect that a criminal act has been committed and we are investigating it in conjunction with the police department, we still have to have those consent forms in order to access the information. We still can't get information on the co-resident unless that person agrees or unless—perhaps Mr Simeoni can give you more details on that, but he has developed some rather unique skills. I think he should be teaching a course to other people across the province in what he has learned to do.

Even when you have a signed consent and you want information from UIC, they will only give you information for a specific 12-week time period, and we are finding with many of the cases we are prosecuting that the fraud has been ongoing for years. Revenue Canada won't give you anything unless a charge is laid. We have difficulty defining what a family situation is. It's very difficult to prove cohabitation. It's ridiculously easy to claim that the cohabiter is living somewhere else. I give you all of the ways in which it can be done, though I don't suggest that you try them.

Fatherhood is easy to deny: "That's not my child. I refuse to pay for that child. I just happen to live here and sleep in that bed five nights a week, but it's not my job to support her," and on it goes.

Where unreported cohabitation is alleged, the FOI prevents the investigator from verifying the income of the cohabiter. Telephone companies use the FOI to prevent any evidence being derived through the record of telephone numbers. The cohabiter can have given the telephone number at that same address to his boss as his contact number, yet we are not allowed to get that information from the telephone company unless we go to the actual laying of the charge and getting a search warrant. Cellular phones and call forwarding further obscures the traceable path for tracking people down.

The court system is very slow and people stay on welfare while they're waiting for a case to come to court.

Number 12 was a point we wrote several months ago when we were researching this, but we have managed, through some discussions with the crown prosecutor's office, to improve that situation considerably in Thunder Bay.

Witnesses pay the price. The welfare recipient who is charged with fraud continues to be supported until the case comes to court and is eligible for welfare even after conviction, but the witnesses lose pay, have to pay babysitters, have to go back to court repeatedly and frequently suffer from intimidation because they are willing to testify in court.

The collection system is very, very complicated. There are special considerations for welfare recipients who are under the age of 18. Parents do not have to be charged with anything for their children to be believed that they are in danger from their parents. I do not believe that it is ever appropriate to withhold information from parents about their own children unless there is a proven, compelling reason in the child's interest.

1520

I don't have time because I see my half-hour is roaring by, but I have a letter here, parts of which I could read to you—not all of it, because I'd be betraying the confidentiality of the writer—that would break your heart, from the mother of a 17-year-old whose teenager has rebelled and whose family has been destroyed and the system has served to protect her child against her. There is absolutely nothing proven against the parent. A rebellious teenager is strongly supported by the system.

I want to point out, in this case it was not our department that supported this rebellious teenager. Our department turned this child down, who immediately went down the road to the legal clinic for free legal advice: an order to pay interim assistance. It takes six months for it to get to court, and that's it.

There is no recourse for the parents, who watch their children going astray. Some of the letters and phone calls I get, I'm quite serious, would break your heart, that adolescents are almost encouraged to break loose.

These children from 16 to 18 have to sign a separate consent for every person to be checked with, so the teenager can say, "You can talk to my teacher but don't talk to my mother." It makes you wonder why that would happen.

Teenagers are extremely well informed about their rights. They receive advice not only from guidance counsellors in schools but from legal clinics, and they must of necessity receive this information from social workers as well. So they know exactly how to get around the system if they decide to do so.

But parents don't have the right to receive information about their children. I know of the case of a personal friend of mine whose son decided to run away to Toronto. She knew that her son was receiving welfare somewhere because she had heard through his friends and the grapevine. She tried to track this kid down because obviously he was wrecking his life. The local welfare office knew where he was because they were able to call it up on their database, but the FOI prevented them from



telling these parents where their own child was. It was strictly an accident that caused her finally to find him; someone she knew happened to be walking down the street here and saw him and collared him. They finally got him home and straightened him out, and I'm glad to say he finished school and has now made something of himself. But if he had stayed on your streets here in Toronto, with no one giving any information to the mother, he'd probably still be on your streets.

Parents don't have any rights any more. The system takes the child away from them. They share information with each other and everybody can talk to each other within the system, but the parents don't have the right to get information about their own children.

Teenagers who are on welfare live in unsupervised circumstances. I believe we have previously forwarded to the government a resolution passed by the council of the city of Thunder Bay that we think that is not a good situation to allow to persist.

Children who have children are no longer considered children. A 15-year-old gets pregnant and the system immediately treats that person as an adult, supports them, gives them full privileges and rights and protections under the law. But a child who has a child is still a child.

I have pulled out of the recommendations, which obviously apply to the Community and Social Services department as well as the freedom of information commission, those recommendations as they apply specifically to the FOI. This brief will also be forwarded to Comsoc in the hopes that welfare reform will take into account the experiences that we relate here. The two have to work together. Comsoc cannot improve welfare unless the FOI people work with them and vice versa.

I think that the time has come that the right of the public to protect its money must outweigh the right of the individual to privacy when public funds are accessed. I would quote to you a statement, and this is not a new thought by any means. For thousands of years it has been known that the greater the dependence of the citizenry on its government for support, the more liberty has to be given up. It's simply a fact. If you depend on the government to support you, you give up your right to privacy because the taxpayers' right not to have their money abused is greater.

The application of the FOI needs to be simplified, and this should be directed by the FOI. Legislating concepts is not enough. It's wonderful to write a bill that has all the right philosophies and concepts in it, but if thought isn't given to how it is going to be applied by the dozens of agencies that must institute it within their procedures, obviously some very bad things happen.

I think it's irresponsible legislation if it allows agencies to fend for themselves, indeed forces agencies to fend for themselves, in developing their own procedures. That's why all that paperwork developed. You just passed the law and you said, "Okay, you guys, go ahead and deal with it." So they did. They all produced their own forms of paperwork, and now we pay an awful lot for filling out papers that don't get us anywhere. Each independently developed their own bureaucratic procedures. They conflict with each other, and civil servants are beginning

to sink under the weight of all this paperwork.

Parents should never be prevented from obtaining information about their children who are under 18 unless there is a compelling, proven—not alleged; proven—reason in the child's interest to withhold it.

The FOI restrictions that permit landlords to be victimized by welfare tenants should be lifted.

Investigations of suspected criminal fraud should cause the lifting of FOI restrictions to the fullest extent possible under the Criminal Code. There already is protection for individual rights under the Criminal Code. The FOI does not need to add to them.

The FOI commissioner should work very closely over the next few months with the Ministry of Community and Social Services to improve its eligibility screening systems with the public interest in mind.

The welfare system is now seen as a giant way of squandering hard-earned tax dollars. That perception will undermine, in a continued way, the confidence of the people in their own government, and that cannot lead to anything good that I know of. I think it's time we cleaned it up. Thank you very much.

**The Chair:** We have four minutes for the three caucuses, about one minute apiece. Mr Hope, very short.

**Mr Hope:** I was reading a newspaper article of November 9, 1993. Council created a little heat over your study that was being brought forward, according to the paper.

**Ms Dodds:** Two aldermen out of 13 were opposed to it.

**Mr Hope:** We're getting into the issue of dissemination of information. My question would be to the non-elected official, because we're looking at the issue of elected getting information versus non-elected. In your role of getting information and working with social services, my question would be, because of the time, should elected officials receive confidential information such as social assistance?

**Mr Simeoni:** I don't think so. But the point that has to be made is that the reason for my being here is that my investigations continue to be impeded in the pursuit of alleged abuse. I don't have to report back to an elected official—that's irrelevant—but I can tell you, sir, that I've been doing this for a long time. My investigations are impeded, and that's the message I want to leave you with.

**Mr Hope:** A minute's not a lot of time.

**Ms Dodds:** Mr Chairman, in further response to that question, the council by resolution approved this brief so I think any suggestion that it was not supported by council is totally false. I do believe in majority vote rules.

The other point—

**Mr Hope:** The city manager, Bruce Thom—

**Mr Tilson:** Let her finish her statement.

**Mr Hope:** Well, there's only a minute.

**Ms Dodds:** That was a misquote in the paper as well, and if you wish to contact Mr Thom, the city manager, directly, he will confirm that. I received a personal



apology from the editor for that misquote.

The second point I wish to make is that the brief does not ask for the right of elected officials to receive information about individuals. I do not believe that would be appropriate. I think investigating officers need that information in order to eliminate fraud within the system.

**Mr Tilson:** Obviously, I haven't got time to ask many questions. I would simply say that trying to figure out the big picture at this place is useful. Your comments probably are more towards Comsoc, but no question that both of you expressed your frustrations under freedom of information. It will be very helpful for me to further study your brief. I will also endeavour to find out information from Manitoba, because you've spoken quite highly about that. I don't know whether other members of the committee will, but I certainly will be pursuing that. I thank you very much for your presentation.

**Ms Dodds:** Thank you.

**The Chair:** Mr Hope has a question to research.

**Mr Hope:** I'm trying to remember the date. It was in the public accounts committee dealing with the auditor's report about fraud. There was a presentation made by the then deputy minister, Charles Pascal, around procedures to work with Quebec, the federal government, the WCB, health and safety and other agencies. This brief seems to be totally focused on social services and alleged fraud, so I believe that report of protocols and procedures being put in place would help balance the report.

**Ms Swift:** So you'd like a copy of that.

**Mr Hope:** A copy of the Hansard of the presentation by Charles Pascal dealing with this issue of fraud.

**Mr Tilson:** I don't know to whom I direct my question about the Manitoba report that was referred to by Ms Dodds. I don't know whether it's difficult or expensive to get that. Perhaps my question is to legislative research. Do you know anything about that report?

**Ms Swift:** I don't, but I can find out for you and report back to the committee. If we can get it within the next time frame—and I don't see why not—I'll do that.

**Mr Tilson:** Thank you.

1530

#### CITY OF TORONTO

**The Chair:** We have a delegation from the city of Toronto legal department. Welcome. Please identify yourselves and your position. We have till 4 o'clock, so if you can leave some time at the end, the members appreciate asking questions.

**Ms Barbara Caplan:** I think we will. My name is Barbara Caplan. I'm the city clerk of Toronto and I'm the head's designate for the city for MFIPPA. Do you call it "MFIPPA"? That's our buzzword. Is that okay?

**The Chair:** Yes, it saves time in the brief.

**Ms Barbara Caplan:** I'll introduce to you my co-worker Donald Leith, who's the manager for MFIPPA for the city, and Jane Speakman, who's one of our legal counsellors from the Toronto legal department.

First, I apologize for not providing our submission in advance. It was adopted unanimously, but yesterday afternoon was when it went through council. We've

provided it to Lisa, and hopefully you'll have copies of that.

I just want to make brief introductory remarks and tell you that the city of Toronto's worked very hard to comply with and apply MFIPPA. We take it very seriously for two reasons. The first is that the city believes very strongly and supports the goals of the act. The second is that we devote the better part of \$1 million to administering the act every year. We have shrinking resources and they're precious, but we're happy to spend that money.

We appeared before your committee in 1991 to make comment on the provincial version of the Freedom of Information and Protection of Privacy Act. Some of our comments today relate to the recommendations which were contained in that review, and others have been drawn from our now very extensive experience with applying the act.

We hope you'll find that the 14 points we're going to raise with you are constructive; we mean them to be so. We'll also be very brief. I know that two of our councillors earlier freed up half an hour of your time, but we won't try to make up for that.

I'm going to ask Donald Leith, together with Jane Speakman, to present the points in our brief.

**Mr Donald Leith:** I propose to go through the points very quickly, about a minute each for the 14, and then you'll have time for questions. You'll note that in some cases, we do refer to recommendations contained in the report on FIPPA itself, so if you have that, it may help.

The first point is simply one where we agree with the recommendation already made, which is to have a provision in MFIPPA to prevent frivolous and vexatious requests. We have been experiencing them, we've had a number of them, and we think there's a lot of merit in the previous recommendation so we would support that in MFIPPA.

The next issue for us is what we call the question of parallel access. That is a case where the city may be involved as a party to an action and the requester or requesters are also party to that action. By operation of MFIPPA, they can sometimes obtain access to our records far in advance of other disclosure provisions that would be available to them under the action, either discovery in a civil case or, say, through a pre-disclosure hearing at the OMB. We think that creates a procedural unfairness. We recognize that we can claim exemptions from the legislation, but if it goes on appeal the privacy commissioner may rule against us, and we're left with that concern.

So we're recommending that MFIPPA be amended to provide that where there are other rules of production in place, those rules should prevail, or alternatively, where that's not to be the case, the institution should be entitled to reciprocal disclosure of documents when there is an action in which both the requester and the city are parties.

Tied into that is our next point, but it also relates to some things the committee on FIPPA found, which is that we believe there should be a requirement to state the purpose of a request. I would note that two of the



previous committee's recommendations recognized that a statement of purpose may be required in some cases, both with respect to requests for access to mailing lists and also in order to identify requests made for commercial purposes. We think this would apply to these parallel access cases and may also assist in dealing with frivolous and vexatious requests.

The next point we have has to do particularly with our internal investigations. We have an internal process for investigating allegations of workplace harassment, and one of the difficulties we have faced is getting witnesses to come forward to provide information. So far it has been impossible to guarantee confidentiality, which I think has an inhibiting effect on the witnesses. We're asking you to consider ways to deal with that problem. We don't think we're unique in facing that. I think other institutions that have internal processes have had the same kinds of problems.

We recognize that at the time of the provincial review, a request was made for institutions to have more discretion in setting fees. It was the previous committee's view that there should not be a more discretionary fee schedule. However, we do have some specific concerns and we're asking that we at least be allowed to set fees for specific kinds of records that are not already covered by the regulation.

The example we've given relates to copies of building plans. For a long time at the city of Toronto, we have microfilmed all building plans that are submitted, for security reasons and for other reasons. We've obviously invested a lot of money in that technology, and we have the ability to produce large-scale copies from reader printers, which we used to charge at \$12 a page. Under the fee schedule, it's been argued with us that we should be charging 20 cents a page because these are photocopies under the regulation. We don't think that's appropriate and obviously it would mean a significant loss of money for us.

Our next point is a technical one but important to us. At present, the Information and Privacy Commissioner orders an institution to release records if an institution's exemptions are not upheld on an appeal. So far, the privacy commissioner has never himself released the documents—he merely makes an order—but there is nothing in the legislation as it stands to prevent that, and we feel it should be made explicit that it is up to the institution. We feel that the privacy commissioner has sufficient recourse: If an institution fails to comply, it's open to the privacy commissioner to ask the Attorney General to bring a prosecution. We feel that would be useful to protect the institution, because if the privacy commissioner released the documents himself, the institution would have no recourse.

The next issue is quite a sensitive one for us and one for which we get a lot of requests. It has to do with mailing lists. We agree with the recommendation in the previous report that mailing lists be dealt with so that release of a mailing list would be considered a presumed unjustified invasion of personal privacy or, at the least, the circumstances in which mailing lists could be available would be spelled out.

As I point out, as I read the recommendation, it has to do with formal requests for access as opposed to the regular process for providing access to personal information under part II of the act.

Our next point has to do with recipients of social assistance in a specific way. We're concerned about protecting the privacy of certain individuals who may live at an address which has a personal qualification for you to be able to live there. In other words, if it's a residential care facility for people with mental illness, anyone who lives there by definition must be suffering from mental illness. We are concerned about requests sometimes which appear on their face to be only for address information but which we feel may in fact be for personal information.

#### 1540

The next issue has to do with archival records. There's quite a good recapitulation of the position of the archives of Ontario in the provincial report. The city archives, which are well used, faces exactly the same problems and supports a similar amendment to MFIPPA that would have the effect of making general records available after 20 years from creation and records containing personal information available after 100 years from creation of the record.

We don't feel, and we supplied a separate report to you in 1991, that the investigative powers of the privacy commissioner should be extended. We see the privacy commission primarily as an administrative tribunal and not as an investigative body.

There was a recommendation in the previous report that institutions be required to produce regularly, I believe annually, lists of studies and policy documents that are publicly available. We are not very happy about that. We are already required to produce a directory of records. We haven't updated the directory for 1993; it's a reasonably low priority for us. I've been in the office since it opened on January 1, 1991, and five people have asked to see our directory of records. They don't rely on the directory, they rely on us or on the assistance of the department, in locating the record or records they want. So I don't think it's particularly useful. It doesn't seem to be a major problem that's been advanced by anyone who's used our services.

We also note, in the previous committee's report, that they were concerned about delays in the appeal process. Since that time, the Information and Privacy Commissioner as a matter of practice has imposed time limits on institutions in both supplying records and supplying representations to the privacy commissioner. Once we have done that, though, there is no time deadline on the privacy commissioner to render an order. I would point out that the new British Columbia legislation requires an appeal to be dealt with within 90 days of its being filed. There's nothing similar in Ontario, but we're suggesting that the privacy commissioner have an obligation to render an order within 30 days of receipt of all the representations of the parties to the appeal.

We also didn't particularly like the idea that penalties could be imposed for delay in the form of not being able to claim fees. We believe that although the power given



to the IPC would be discretionary, at least as set out in this report, what would happen is that there would be a further ground that would have to be argued: The institution would have to show that it was acting in good faith. We have enough work to do on appeals without having to add yet another ground.

Finally, we support the committee's position which says that it would not like to see a privative clause added to the legislation. That would have the effect, of course, of suggesting that perhaps even judicial review is not available. We are not asking for a broader right of appeal, but we feel that the right to apply for judicial review should remain in the legislation.

Those are our 14 points. If you have any questions, we'd be happy to try and answer them.

**Mr Elston:** I was interested in the appeal issue, since we dealt with that with one of the preceding presenters. My concern is that if we tend to make this thing much more complex, on appeal and otherwise, we are going to end up with costs that really go beyond what this already puts the city of Toronto back. As a preliminary, I wonder if you can estimate for me what the expense is for the city at this point and how much it would cost to process an appeal, for instance.

**Mr Leith:** I can't tell you as a general term, because it really depends on the nature of the records and the nature of the request. It can be something that's very simple. It can be an appeal, for example, from a decision where we advised that we have no such record. It might be a matter of a couple of hours to prepare an affidavit by the person who searched for the record. That might be all. On the other hand, we have appeals where there might be 10 issues raised, all of which require substantial representations. I can tell you that we had one where we submitted representations and waited over a year for the order, and I think we had about 20 pages of representations.

**Mr Elston:** In that case you may have been happy to have waited the year for that reply to come back.

**Mr Leith:** I'm not so sure, though. It's interesting, and I think we should make it clear here that we are taking seriously the committee's approach that what we're interested in is a speedy resolution of the disputes, both from the point of view of the institution, which will not always suit us, and from the point of view of the requester. In asking for there to be a time limit on rendering orders by the IPC, I would assume that is very much in the interests of requesters.

**Mr Elston:** Could you tell me a little bit about the frivolous and vexatious applications? That's one that's been popular. Could you suggest for us the nature of the frivolous and vexatious type of applicant, and secondly, whether or not you perhaps see the prospect of the use of a user fee for each request as being partly a way of controlling that issue without getting into trying to define it in a statute, which as everybody knows is a very difficult thing to deal with and probably would take you into a lot more court issues, or could take you into more court issues.

**Mr Leith:** It's really difficult to speculate on the

motives people have in making it. I can give you a couple of examples.

An early one we had was a case where a requester was involved in a dispute with one of the city departments, as the result of which he filed 12 requests, all of which were for huge numbers of documents. That was a case where, clearly, we think it wasn't really directed at getting information that would help the dispute; it was just a way, I think, of expressing frustration with the substance of another dispute with the city.

More recently, we've had a number of requests where they're coming in almost as though the person has sat down with our telephone directory and just picked out each area of the city and then faxed in request after request asking for all their records.

**Mr Elston:** You mean for the requester's records or the department's?

**Mr Leith:** No, just records; in other words, taking a list of every board, agency and commission of the city of Toronto and asking for all minutes since they were created. Many of these things are available publicly anyway, but the time—

**Mr Elston:** Perhaps you could send them a videotape of the last council meeting.

**Mr Leith:** Maybe. Our problem: There is a provision in the act to say to people that these things are publicly available elsewhere, if they are; it's the work involved in dealing with all these things when they come in, just having to track it all down and so on.

**Ms Jane Speakman:** One of the points Donald was alluding to was the amount of work most recently and I think you asked the question about cost involvement with appeals. There are a couple of points I was going to make.

Donald is the freedom of information manager who deals with these. By the time it gets to an appeal stage, we have a lot more involvement with city staff. The department from which the record has been requested would be involved, and that involves one or two people. There would be Donald and his staff involved. By the time it gets to the appeal stage, all the representations and all the appeal information goes through the legal department, which involves legal staff time, including the time of the city solicitor, and then it goes back to the city clerk. So there is a tremendous amount of high-priced support that's involved in responding to the appeals.

I'd like to tie this in with the frivolous and vexatious requests, because most recently we were involved in responding to an appeal which we thought was a frivolous and vexatious request. We met the deadline. We had gone through all this business of the representations. The city solicitor had signed off on the letter. We had it all set to go on the day it was due. Lo and behold, the phone call came saying the requester had dropped his appeal.

If we had some mechanism to deal with this kind of request, we would feel there wasn't such a total waste of time and resources.

**Mr Leith:** I'd like to address your point about charging a request fee. While I understand the ambit of it, I'm just not sure that we should impose a sort of

limitation on accessibility to all the bona fide requesters in order to deal with the serious but numerically fairly insignificant number of frivolous and vexatious ones, if it is open to us to make a decision not to reply because it's frivolous and vexatious through means of an amendment.

There is an appeal process to the privacy commissioner and the privacy commissioner can rule on that. I'm just saying that I'm not sure the fee route is necessarily the answer either, because there could be bona fide requesters who might feel inhibited about making a request if there were even an upfront fee.

1550

**Mr Tilson:** Continuing on with that point, I'm sure you're far more familiar with the legislation than I am. On that last point where you indicated an appeal to the commissioner, I raised the question this morning to a non-legal person as to another alternative to stopping the frivolous and vexatious claims. Obviously the fee is one where you run the risk of making it prohibitive, or people just won't be bothered to make a claim because the fees are out of sight. There is the risk of the municipality or the province or the institution boosting up their fees so high, at their discretion, that it becomes out of sight.

Are you both solicitors?

**Ms Speakman:** I'm a solicitor.

**Mr Tilson:** My question is a question that I asked to a non-lawyer this morning, and that had to do with some sort of procedure that would have to be set up, perhaps from the commissioner's office. I drew the analogy of the Ontario Municipal Board. In the past, when an application was made for a development and a competitor appealed the process, whatever one was doing, it was very rare that costs were awarded by the Ontario Municipal Board. Now that is happening more and more, particularly if it becomes quite apparent that the purpose is to delay the development because of a competitor. Now costs are being awarded and they're substantial costs.

My question to you, as a solicitor or someone who has some knowledge of legal procedures, because this isn't really a quasi—well, I guess it is; there are decisions that are made—is whether there would be a process that might deal with this. It would be the commissioner who would determine if particular claims—there would be a process where a municipality, a school board or the province, for that matter, could make an application to determine whether or not that is a frivolous claim and the commissioner could award substantial costs. That is lurking over the heads of these people who are obviously out to sink the municipality in waves of paper and everything else and that sort of thing. I raise that as an alternative to the fee issue of discouraging the frivolous application.

**Ms Speakman:** I was just speaking with the city clerk and we haven't discussed that in any great detail. It could be something that's worth discussing. My understanding, and I don't know if the IPC has made any representations to you or has commented on that, is that I think right at the moment they have some kind of process at their own office. They recognize that there are frivolous and

vexatious complaints and they've developed a system at their end, but I don't think it comes into play until perhaps it gets to the appeal stage or until it gets further on. I guess our concern is that it's too late by that time, sometimes, because we've had to develop and incur a lot of thought and use a lot of staff time.

**Mr Tilson:** If it's a frivolous claim, the applicant may have to pay for that time.

**Ms Speakman:** That's right.

**Mr Tilson:** It gets back, and I haven't read this in detail, I must confess, but I look at page 94 of the one you referred to on the frivolous claims and I get very nervous about heads making these decisions, whether it be—I forget the term you used—a nominated head or—

**Ms Barbara Caplan:** Delegated.

**Mr Tilson:** —a delegated head. To me, the political interference, what a wonderful way to get rid of someone. You say: "It's frivolous and vexatious. Go away. I'm not going to give you that information."

**Ms Barbara Caplan:** I agree. I think that what we've looked at as frivolous complaints are, for example, we have two requesters right now with 26 requests before us each. We don't even consider whether it's frivolous or not until we get a deluge like that. Maybe that could be spelled out. I know that the IPC's system for appeals of that nature has a list of 10 and then things are bumped in as they're dealt with at the bottom. Maybe there's a process like that.

**Mr Tilson:** There may be extremes of what is frivolous. A police officer came forward this morning and told us someone wanted to know what sort of toilet paper the chief of police uses. You can get those extremes where what you're obviously out to cause are difficulties, but there may be a deluge of applications that may be, in certain circumstances, quite reasonable. That's why I get concerned with the delegated head making that decision and why I would prefer that the decision about what is frivolous or not frivolous be made by an independent type of individual.

**Ms Barbara Caplan:** I understand that, and of course anyone who is judged to have given us a frivolous or vexatious request has appeal to the IPC as well.

**Mr Tilson:** On the issue of fees, I just express my concern. I understand the frivolous part of it. I look at the issue of income generating source. I could just imagine the cost, if you start analysing what this costs in time or paper or running a computer or some other machine to figure all this out. My fear is allowing the administrator to go wild on fees, because I've seen this province, I've seen municipalities—I can't understand a municipality charging \$50 for a tax certificate or something like that. I'm sure you could debate that with me.

**Ms Barbara Caplan:** We charge \$5.

**Mr Tilson:** You charge \$5? Well, that's good to hear.

**The Chair:** Mr Tilson, we've got to go on. I never heard a question there; there were statements.

**Mr Tilson:** My question is the fear that the abuse could continue, of the administrator or the politician.

**Ms Barbara Caplan:** Of course there are ways of not



paying the fees. The act provides that the fees can be waived if we're of the opinion that it places a financial burden on the requester. We seldom tend to apply fees. If it's for a commercial purpose, if it's a lawyer coming for information for his client, we will.

**Mr Tilson:** The head has that discretion.

**Ms Barbara Caplan:** That's right, but that's also appealable to the IPC.

**Mr White:** Moving firstly to a simple issue, if you have someone in your employ and a landlord wants to know where they have moved to—they formerly lived in his apartment building—is there any obligation for you to disclose that information to the landlord, of someone who is in your employ, in whatever position?

**Mr Leith:** Not to my knowledge.

**Mr White:** Their personal information should be kept private, should it not?

**Mr Leith:** You can only give it out if one of the circumstances in section 32 of the act applies. There are a number of them, and I can take you through them, but those are the provisions that allow disclosure in the normal course of business.

**Mr White:** But for any employee, anyone to whom you are paying a cheque to a specific residence or whatever, you would not be obligated to disclose that information?

**Mr Leith:** You can do it if you're required to do it by another statute, if you had a court order, for example.

**Mr White:** The reason I ask is that we had an earlier discussion with someone from Thunder Bay who was suggesting that people who are welfare recipients should not have the same rights as the rest of the universe.

In regard to the frivolous and vexatious issue, as you mentioned, sir, that's a very rare occurrence, but it is the kind of thing that comes up and has come up time and time again. We had one very clear example—actually two today—of that kind of thing, but they are almost a red herring in these circumstances. Do you feel that the recommendation you cited would adequately deal with those concerns?

**Mr Leith:** I think so. It gives the head the right to refuse to reply, subject to the requester's right to appeal to the privacy commissioner, and that seems reasonable.

**Mr White:** The use of fees as a means to deter frivolous requests, and the use of fees as a means of certainly raising revenue but also as a means of penalizing people, is not the venue you would want to pursue.

**Mr Leith:** I think I said I was concerned about restrictions being placed on people making requests in the first place, but I haven't thought very much about Mr Tilson's comment about the privacy commissioner's ability to be able to impose a cost on someone if they found it was frivolous and vexatious. I don't think we're advocating a fee up front to make a request.

1600

**Mr Hope:** Just one basic question, dealing with the accessibility issue and the people who have visual-impaired problems: Because of your large population here, and this was brought to the committee's attention,

about their access to information, could you maybe inform this committee, do you have a protocol or procedure to deal with the visually impaired, to provide them with information, or do you even have any cases?

**Mr Leith:** We haven't had any cases, but I can tell you that generally in the clerk's department we have an access office that deals with all kinds of disabilities as well as multicultural access. So we would be prepared to work with the people there if a case arose.

**Ms Barbara Caplan:** We have the ability to contract assistance for anybody who needs it.

**The Chair:** Thank you for appearing today.

**Mr Hope:** I need the clerk's advice here. We received the presentation from the corporation of the city of Thunder Bay and it says "the council and the corporation of the city of Thunder Bay." I've had the opportunity to read it and nothing is mentioned about social assistance or the problems around social assistance or individuals, but we did receive a presentation earlier from Mrs Dodds from Thunder Bay, and I was looking for it. I'm just curious because the agenda says it's from the corporation of the city of Thunder Bay, but there's no recognition in her presentation of it being that.

**Mr Tilson:** So what's your point?

**Mr Hope:** My point is, is Mrs Dodds speaking on behalf of the corporation or is this paper speaking on behalf of the corporation? It's not indicated and I need clarification from the clerk.

**Clerk Pro Tem (Ms Tannis Manikel):** When we first got in the paper that I handed out last, the letter signed by the clerk, Elaine Bahlleda, I called her yesterday to clarify whether this would be Ms Dodds's presentation or not, and she said no, they were separate presentations. This one deals with the administration. She asked that I not hand it out until after Ms Dodds had made her presentation so that Ms Dodds would not be questioned on the administration aspect. She didn't feel the alderman could answer those questions or be expected to answer those questions. That's why I handed it out after, but they were both appearing for the corporation of the city of Thunder Bay, I was told.

RAY DESJARDINS

**The Chair:** We have Mr Ray Desjardins from the Metropolitan Toronto Police Force, freedom of information unit. You look familiar; I think I've seen you earlier today, or was it yesterday? Earlier today, I believe.

**Mr Ray Desjardins:** I was here today as part of the Ontario Association of Chiefs of Police delegation. I'm on their subcommittee.

I'd like to mention that I think you'll find on the very top of the handouts that I presume are being passed around now a letter that was drafted about an hour ago.

My presentation today should not be seen as necessarily the opinions or the views of the Metropolitan Toronto Police Force board. While the presentation has all sorts of mentions about the Metropolitan Toronto Police Force and the force, I'm speaking on my own behalf right now, albeit as an employee of the force who's worked in this area for five years. I set up unit at the Metropolitan Toronto Police Force. I'm the present coordinator or the



commander of the unit. I'm a former vice-president of the Canadian Access and Privacy Association and I'm currently a director of that organization. It's a national organization dealing with access and privacy issues.

I was here this morning and basically, as the documents indicate, my position here is one of support for the recommendations of the Ontario Association of Chiefs of Police's submission. Basically, I'm just here to sort of back those recommendations and corroborate them in that they reflect the situations I've discovered within the Metro Toronto Police Force as far as freedom of information and privacy protection issues are concerned.

I'm not going to read through the whole document. I think that would maybe not be very economical use of your time. You can read. Basically, as I said, it's simply reiterating the positions mentioned at 10:30 this morning by the Ontario Association of Chiefs of Police. I'd just like to go over the main points that obviously I feel strongly about, and perhaps then that would allow more time for questions and elaboration, if anybody wishes.

The first correction or amendment I'd like to see to the act is the solicitor-client privilege. Section 12 of the municipal act doesn't allow municipal police forces to apply the same kind of exemptions to crown attorney-police force information of documents as the provincial act allows the Ontario Provincial Police.

One of the orders issued by the commissioner, M-52, basically states that a member of the Solicitor General's office cannot be seen as a client of a municipal police force. That's the legal problem there. I'd like to see the act change so that the municipal police forces could claim that exemption to protect crown attorney-law enforcement information periodically, when it's called for.

Vexatious requests: I think we dealt with that this morning. I was the police officer Mr White mentioned, the example he used. I think that's been sort of done to death, but nevertheless we feel strongly about it. Someone mentioned in just the last 15 minutes that it's certainly not the normal occurrence; it's not the norm. It happens once in a while, but those once-in-a-while occasions can cause a lot of problems. This whole process is extremely labour-intensive as it is. When you get a vexatious request, it just makes it even more so.

Clause 8(1)(a) of the act, the interfere with law enforcement section: That was touched on this morning. I'd just like to stress that this is the exception to the rule, but there are occasions when these exceptions to the rule loom very large and cause an awful lot of problems and force members of the freedom of information units and members of the IPC and everybody to scurry around trying to find ad hoc mechanisms or Band-Aid solutions, rather than just quote a section or a subsection of the act which would cover us in those situations.

I realize this type of situation could be seen as stonewalling or blocking legitimate access. That's why I stress here that there should be some sort of mechanism to sort of check off with the IPC to determine that this is indeed one of those bona fide cases where this section is legitimately applied.

The appeal process: This was mentioned by the OACP

this morning. However, not many police forces have had experience with the oral or verbal representations. Our force has because we're part of what's called the innovation pilot project working group. That mouthful is simply part of a study, a process by the Information and Privacy Commissioner of Ontario to try and cut down the time involved in appeals—some appeals were taking extraordinarily long periods of time—and to make things a little more efficient or efficacious.

The oral representations: It sounds great in theory, but in practice I've found there are particular difficulties. My difficulties are documented on page 4. Basically, most of them speak to the fact that there's no record other than the memory of the person who's on the other end of the line and the notes they managed to jot down, should a substantive issue arise.

This has arisen in a case I was dealing with where the issue was an item that was overlooked; at least in my opinion overlooked. I'd like to see, if they're going to have oral representations, having an audio tape or maybe a synopsis that's sent out to the institution prior to the order being issued so that the institution in effect could say: "Now wait a sec, that's not what I said. What I said was....," and that sort of thing. That's the danger as I see it with oral representations.

On page 5, the 30 days standard time period before compelling records disclosure by the institution: This situation can arise once in a while. Nowadays the IPC usually gives 25 or 30 days, I believe; usually 30 days. There are occasions when they'll just give two weeks or 15 days. Their argument—the IPC, that is—is they'll always give 30 days when it's a third-party personal information issue. On occasion, one of the points that we're arguing about is whether this is in fact personal information as defined by the act.

In those cases, I think they should be given 30 days, so I think just a simple 30-day period by the IPC telling the—what I'm talking about now, of course, is the situation where the commissioner's order has ruled against the institution and the commissioner's order says, in effect, "I order the institution to release these records." What I'm suggesting is that I'd like to see it, "I order the institution to release these records in 30 days," and not before and not after, but within 30 days, after 30 days. That way, that would give institutions time to study the order, to discuss it, to seek legal counsel if necessary and possibly go to judicial review if the issue is that important.

1610

The last point is the question of financial hardship to the institution. I suspect that's an issue that has been dealt with once or twice before on this day or other days. I don't want to sort of overreact or belabour the point, but the budget of my unit was \$462,000 last year. We processed 726 official access requests; that is to say, a written request comes in as a bona fide request, it's accepted, it's in writing, they say, "I want this information pursuant to the act," it's assigned a file number and the analyst gets on with it.

To give you an idea of the trend, in 1991, which was the first year of full operation for the municipal act, my



unit dealt with 351 requests. In 1992, we dealt with 535 requests, and as I said, we finished the year with 726. We've got about 40 or 41 to date in 1994. So it's a growth industry; let's put it that way.

The staff who deal with these issues: There are nine of us, and actually effectively eight because my assistant is on pregnancy leave right now, so that leaves us with eight people, the same as we started with back in 1991. Our workload has increased about 106%. We've got to the point where initially, of course, we're learning to process the requests, we've learned shortcuts, we've learned more efficient ways of doing things, but those kinds of slack have all been taken up and we're up against the wall right now; we really are.

As many of you probably realize, at the local municipal level here in Toronto, the police force budget is in very sad shape and we're certainly not about to get extra staff. So I'm thinking that if we can have realistic cost recoveries, I can go to my bosses and say that if I could have a few more staff members to cope with the load, they can be at least partially compensated for by the recovery of fees.

Those are the recommendations. As I've said, I'm not going to read the whole thing. It's there and most of it was covered by the points raised this morning. I thought I'd leave a little bit more time for questions.

**Mr Hayes:** Nice seeing you again.

**Mr Desjardins:** Thank you, sir.

**Mr Hayes:** Actually, as part of the question I asked this morning, maybe a little further on that, on dealings with the media, can you give us some examples on how the freedom of information could actually hinder investigations? What kind of guidelines do the police use? Either way, I guess, even without the freedom of information, how far can you really go? How much information can you give out without it actually hindering police investigations?

**Mr Desjardins:** Usually not a lot of information can be given out when there's an active, ongoing investigation, as opposed to one that's been dormant for a number of years or a long period of time and someone's doing historical research on it or whatever. The funny aspect is—I shouldn't say "funny"—that we anticipated a deluge of requests from the media back in 1991 when the act started up, but in actual fact we've had very few requests from the media.

One of the reasons is the 30-day time period, of course. For the Toronto Sun or the Toronto Star to jump on an item that's hot, that's topical, that's just happened, they want the information right now, and everything under the act is done by correspondence. We get the request in and we send a letter saying, "We've received your request and assigned a file number. If you have any questions, contact this analyst." We have 30 days to either respond with the information or give them reasons why they're not getting the information and notify them they have the right to appeal to the Information and Privacy Commissioner of Ontario.

Usually, we find that the majority of requests are for old investigations, investigations that have been basically

dealt with by the courts or there is no more looking for a suspect or an accused. We get a lot of requests from people who are involved in crime, from witnesses, from bystanders, from the victims themselves and, of course, from the criminals, the people who are in jail or the people who have been accused and convicted of the crimes.

We get a certain amount of letters from lawyers. I guess we can't say there's any really typical request—all sorts. But in terms of criminal investigations, usually the request is from somebody who has been involved either directly, indirectly or even in a peripheral way in the police investigation.

Sometimes we get requests: People see three police cars parked at the end of their street on a Thursday night and they wonder what it was all about, so they make a request saying, "I saw three police cars," in which we get the officers' memorandum books, the reports that were submitted, if any, the computer tapes saying who was at the scene. We'll give them basically anything like that. That's no problem. They get an awful lot of information.

**Mr Hayes:** You talk about what your organization is and what it has cost you already, \$462,000, and you only recovered about—am I reading that right?—\$300.

**Mr Desjardins:** That's probably about right for this year. One of the problems of the cost recovery, the way the act is structured now, is the two hours free search time and the strict limits on what we can charge. The Information and Privacy Commissioner of Ontario takes a very strict interpretation of the sections and the Ontario regulation that govern costs.

One of the facts that really concerns us is that if we get a file, for example, of 500 pages, which is not typical but is certainly not unusual either, in going through all those documents, an individual, a human being, has to sit down and read through every line to guard against the inadvertent release of something which could harm someone, a witness or an informant, that sort of thing, whereas the IPC tends to take the view that an experienced employee of the institution should be able to look at a document like that and say, "Yes, no, first paragraph" and go on to the next page.

That's not the way it's done. The bulk of the time is spent in reading. It's a very tedious job. The analysts who work on this do an excellent job for our organization, but it's very tedious, it's very labour-intensive and it's not readily adaptable to computerization or electronic mechanization, if you will. An individual has to sit down and read through these. We've only recently had a new piece of equipment, which is a photocopier-editor that takes out sections of text when you circle it with a red pen. In the first two years of our operation, it was black markers, felt tips, blacking sections out, photocopying them, holding them up to the light, finding out they're still legible, black-marking the photocopy, putting it through again. It's just awful.

**Mr Hayes:** When you talk about the number of requests, the 726, how many of those would be multiple requests? Would there be a number of those that would be, say, 20 at a time or 10 at a time or whatever?



**Mr Desjardins:** Not at a time, sequentially; Maybe 50 or 60—that's high maybe—at the outside.

**Mr Hayes:** Let me get back to the victim information, when people are asking, whether it be media or anyone else or lawyers. Just how far would the police force really go? I know you have to certainly protect the victim.

**Mr Desjardins:** As far as victim information is concerned, we won't give out personal information of the victim without the victim's permission. This is sort of a concept that some, especially in the press, have trouble coming to grips with, the fact that there's still a privacy interest in information, notwithstanding that information was out in the public at some time, at one point.

1620

For example, there is someone who was arrested or convicted of an offence last year, your neighbour, for example, somebody who moves in on your street, and the rumour is that this guy was involved with the police, so you want to check up on him. You contact the force and say: "I understand Mr and Mrs So-and-so were involved with the police back in August 1987. Can you tell me everything about that?"

Notwithstanding they may have been convicted in an open court back in August 1987, there's still a privacy interest in protecting that information. If the person knew which court it was in, they could go to the Attorney General and say, "I'd like the court dockets for this date in August," and find out. If they come to us, we'll refuse to give it to them. We'll say, "We're sorry, we can't give you that information." In effect, we'll refuse to confirm or deny the existence of any information.

We protect personal privacy very strictly, and that's the message I try and get across to people who aren't familiar with our operation, that the majority of our work is spent protecting the privacy of those with no connection to the police force. A lot of it's even people who are in jail; we protect their privacy too. A small percentage of our time is spent actually protecting police operations qua law enforcement, or that sort of thing, if we blow an investigation; very little of it, actually.

**Mr Hayes:** How many requests do you get from the crown?

**Mr Desjardins:** From the crown? I don't think we've had one this year directly. Sometimes we transfer portions of requests to the Solicitor General or we back and forth with—they get requests, for example, that involve a joint—

**Mr Hayes:** Requests that go through the crown to you.

**Mr Desjardins:** From the crown to us, directly from the crown?

**Mr Hayes:** Yes.

**Mr Desjardins:** I don't think we've had one in 1993 from the crown.

**Mr Elston:** I'm interested in the crown brief and the relationship of Metro police, which of course will cover any municipal force with the crown. Would it be enough to make an amendment which said that you will be considered for the purpose of this act a client of or—

**Mr Desjardins:** Yes, that's how—

**Mr Elston:** That's basically how the OPP are seen? Is that it?

**Mr Desjardins:** There's an anomaly in this, and I don't know, but I don't think the drafters of the legislation realized that at the time, so it's kind of an anomaly. It's not the fact that we're going to resort to it every day, but there are occasions when there's sensitive information passed back and forth between the crown's office and the law enforcement investigators. If we didn't have any other exemption to protect that, we'd be at a loss because we'd say this is obviously crown privilege, but maybe not so obviously because of order M-52.

**Mr Elston:** What about the study now which is talking about total disclosure material? In one way, I suspect the crown and the force now are actually in a position where if a defence counsel asks or requests, you probably feel obligated to provide, but are you worried about somebody other than the defendant's agent or counsel asking for this? Are you worried, for instance, about perhaps counsel for an alleged victim or maybe just somebody out of the newspaper or something looking for this material?

**Mr Desjardins:** Yes, it's possible. Since the Martin report and the Stinchcombe decision, there's been even more and more emphasis on full disclosure, but they're two separate processes and it's really necessary to see them as such, freedom of information requests under the act and full disclosure.

We quite often get requests from lawyers or individuals or agents for individuals asking for all information pertaining to this certain investigation in which they were charged or convicted. We'll respond and supply them with a certain amount of information, but we'll protect the personal information of third parties. Their lawyer will tell us that he had this at full disclosure at the trial or would have had this at the full disclosure at trial. Either way, our answer is basically that that may or may not be true; it's not our job to go checking in the crown files and see if it was disclosed or not.

We deal with a very specific piece of legislation, the Municipal Freedom of Information and Protection of Privacy Act; we don't deal with full disclosure. That's the way we deal with that. Basically, people will not get information from us that they would have had in their full disclosure at some point in the past.

On the other hand, I mentioned 726 official requests. We get a lot of phone calls from unit commanders and other police officers saying, "What do I do?" We've had quite a bit of activity on full disclosure. We've been involved to the extent with the courts officers that we tell them: "If it's full disclosure, if somebody asks you for something from the crown attorney's office and he says it's necessary to comply with the full disclosure process, give it to them. Whatever they want, give it to them." That's been my instructions from our legal people.

I tell the officers, "If you have any particular concerns about the safety of a witness or anything like that, or the integrity of another investigation, make your comments known to the crown attorney's office." But after that, it's



up to him. If he wants to give it to the defence, even though you think he shouldn't, it's the crown attorney's call.

**Mr Elston:** In relation to the force itself, have you had inquiries from many people trying to figure out, for instance, what equipment you're issued with, what you have? There has been quite a degree of debate about, for instance, the issuance of new side-arms for a while, and then the issuance of being outgunned, I think, as it was described by some people. Have people been trying to take advantage of that to determine exactly how your force is equipped to deal with your surveillance and day-to-day policing?

**Mr Desjardins:** Yes. We've had a number of requests where they've asked for equipment. The ones that I can remember are that we've had several requests for the radar that the traffic officers use, the frequency band it operates on, the cycle, that sort of thing.

**Mr Elston:** Do you give that out?

**Mr Desjardins:** Actually we do, yes. We checked with the radar people at the police college and they said this is a commercially available item, that it's not secret or confidential.

We've had requests for tenders for our computer contracts and that sort of thing. We had requests from someone just recently who wanted the entire procedures manual of the Metropolitan Toronto Police Force and our rules and regulations. The rules we gave him are available to anybody down at the great Metro Hall for a payment of \$10. It's a Metro bylaw, so, sure, it's public. You can have it for \$10.

The force procedurals manual: We have to deal with that on a case-by-case basis, and that was an interesting case because there we had virtually no cost recovery whatsoever, yet the manual's this thick. It means going through each chapter and checking with the appropriate authorities.

The section that deals with major frauds, for example: In my 23 years on the force, I've never been on the fraud squad, so I've never dealt with major fraud investigations. We have to have the analyst check with the fraud squad guys. So all that sort of back-and-forthing can't be charged because what the IPC sees it as decision-making, we see as information gathering, but we can't charge for that. That, in my view, is one of the invidious aspects built into this.

**Mr Elston:** We had a presentation a little bit earlier today from David Giuffrida, I think, who was here after your earlier appearance. David is a patient advocate office director, I guess, with the Ministry of Health. He

had suggested that something that would help with some of the requests would be just to charge a fee of \$5; perhaps a fee of \$30, on appeal. Do you have any thoughts on that at all?

**Mr Desjardins:** Yes, I think it's a great idea. Actually, the imposition of a flat \$5 fee, or as you say, a \$30 appeal fee, would probably, in many respects, render superfluous the vexatious request clause, because these people who keep coming back over and over and over must have a limit to their resources too, so it would at least make them think twice.

**Mr Elston:** You wouldn't have as much of a concern about that type of application. Have you ever had anybody who has applied for information, you've sent them out a sort of—what do you call it?—an estimate of cost—

**Mr Desjardins:** An interim fee estimate.

**Mr Elston:** An interim fee estimate, yes—who has actually come back and said, "Listen, I really would like this but I can't pay for it," and you've waived it?

**Mr Desjardins:** Yes.

**Mr Elston:** Does that happen often?

**Mr Desjardins:** Fairly often—I shouldn't say fairly often. It happens once in a while where the person is in dire straits. The charges for which we can legally charge would amount to maybe \$12 or \$13, and our office policy is not to charge for anything up to \$10 because it costs us more to recoup that. In those borderline cases, it depends how busy we are. We'll say, "Okay, forget it." We'll give it to them. We can't be bothered stopping the thing. There are cases where people write in—not that they're obliged to by the act; they're certainly not. We can't ask anybody why they want the information and they don't have to tell us. But sometimes they write it in; they say they want it for this purpose or that purpose and it seems very laudable, and we say fine, yes.

**Mr Elston:** Just one last question, and that is about potential costs of media, for putting forward the answers to requests, and Braille, for instance, for manuals and things like that. Have you any ability now to provide people with Braille or tape or any of that?

**Mr Desjardins:** Tape, yes; we have audio tape and videotapes. Now and again we get requests from people who are arrested. They want all the records pertaining to that arrest, including the booking tape, the videotape where they come in and they say, "Empty your pockets, and state your name." So we have to dub a videotape and give them a copy of it.

**The Chair:** Thank you for your presentation again. The committee adjourned at 1631.

*Continued from overleaf*

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

**\*Chair / Président:** Hansen, Ron (Lincoln ND)

**\*Vice-Chair / Vice-Président:** Wessenger, Paul (Simcoe Centre ND)

Dadamo, George (Windsor-Sandwich ND)

Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)

MacKinnon, Ellen (Lambton ND)

Mathysen, Irene (Middlesex ND)

McClelland, Carman (Brampton North/-Nord L)

**\*Morin, Gilles E.** (Carleton East/-Est L)

**\*Sterling, Norman W.** (Carleton PC)

Sullivan, Barbara (Halton Centre L)

Sutherland, Kimble (Oxford ND)

Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Cooper, Mike (Kitchener-Wilmot ND) for Mr Dadamo

Elston, Murray J. (Bruce L) for Mrs Sullivan

Hayes, Pat (Essex-Kent ND) for Mr Paul Johnson

Hope, Randy R. (Chatham-Kent ND) for Mrs MacKinnon

Offer, Steven (Mississauga North/-Nord L) for Mr McClelland

Tilson, David (Dufferin-Peel PC) for Mr Villeneuve

White, Drummond (Durham Centre ND) for Mrs Mathysen

Wiseman, Jim (Durham West/-Ouest ND) for Mr Sutherland

### **Also taking part / Autres participants et participantes:**

Arnott, Ted (Wellington PC)

**Clerk pro tem / Greffière par intérim:** Manikel, Tannis

**Staff / Personnel:** Swift, Susan, research officer, Legislative Research Service





## CONTENTS

Wednesday 19 January 1994

<b>Municipal Freedom of Information and Protection of Privacy Act \ Loi sur l'accès à l'information municipale et la protection de la vie privée</b> .....	M-179
Regional municipality of Ottawa-Carleton .....	M-179
Kelly McGee, staff solicitor	
Leslie Braden, coordinator, freedom of information legislation	
Mary Jo Woollam, regional clerk	
Freedom of Information Law Enforcement Coordinators Network .....	M-183
Marilyn Taylor, chair; freedom of information coordinator, Halton Regional Police	
Nancy Groppo, freedom of information analyst, Halton Regional Police	
Paul Perchaluk, freedom of information coordinator, Waterloo Regional Police	
Ray Desjardins, freedom of information coordinator, Metropolitan Toronto Police	
Psychiatric Patient Advocate Office .....	M-188
David Giuffrida, acting director	
Wellington County Separate School Board .....	M-193
Jane Rose, human resources officer	
Ontario Psychological Association .....	M-196
Dr Ruth Berman, executive director	
Dr Brian Wilson, board member and president, psychologists in education section	
Linda Bohnen, legal counsel	
City of Thunder Bay .....	M-201
Evelyn Dodds, alderman	
Riccardo Simeoni, welfare eligibility review officer	
City of Toronto .....	M-205
Barbara Caplan, city clerk	
Donald Leith, manager, freedom of information legislation	
Jane Speakman, legal counsel	
Ray Desjardins .....	M-209

*Continued overleaf*



CAZON  
X270  
-170



M-15

M-15

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 20 January 1994

# Journal des débats (Hansard)

Jeudi 20 janvier 1994

## Standing committee on the Legislative Assembly

## Comité permanent de l'Assemblée législative

## Municipal Freedom of Information and Protection of Privacy Act

## Loi sur l'accès à l'information municipale et la protection de la vie privée

Chair: Ron Hansen  
Clerk: Lisa Freedman

Président : Ron Hansen  
Greffière : Lisa Freedman



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Thursday 20 January 1994

The committee met at 1008 in the Trent Room, Macdonald Block, Toronto.

MUNICIPAL FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY ACT

LOI SUR L'ACCÈS À L'INFORMATION MUNICIPALE  
ET LA PROTECTION DE LA VIE PRIVÉE

**The Chair (Mr Ron Hansen):** Good morning. We'll resume the hearings of the standing committee on the Legislative Assembly on the Municipal Freedom of Information and Protection of Privacy Act.

There were requests from committee members about certain items. Could the research person give us some idea of what she's found out already for the committee.

**Ms Susan Swift:** There are two memos being distributed now. One is in response to the question that was raised first by the subcommittee and then by the whole committee instructing me to ask legislative counsel about the possibility of including in the current structure of the act the institutions that were named, that is, universities, children's aid societies and hospitals.

I did that. I spoke to Mr Revell, who is the chief legislative counsel, and the memo goes into the details he spoke about. Essentially, the upshot of his comments was that it may not be the most practical way of extending freedom of information principles to these institutions, and he cites a few considerations the committee might want to think about in deciding how to do that.

The second memo is in response to a question raised by Mr Hope, that is, the scheduling of the public municipal council meetings. I've discovered that this kind of information is not available. It's not available because nobody collects it and it's not being tracked by anyone, so it would be very difficult to obtain the information and very time-consuming. It has also been indicated to me that any anecdotal information that might be obtained about the timing of council meetings would be incomplete in the sense that it would give you only starting times so it wouldn't give you the whole picture of when the meeting is actually held; it may go on into the evening. The other problem with anecdotal evidence would be that it wouldn't give an indication of whether public delegations could be made to the committee because procedural rules in the various municipalities differ in that regard.

**Mr Randy R. Hope (Chatham-Kent):** If you're telling me it's all mixed and mingled and there's no standard process, that kind of answers my question. I'd like to thank legislative research for at least trying to sort through and find out whether there's information. I clearly understand that you can't pursue it any further, so the report as put forward is really good.

I haven't had a chance to go through the memo on the issue of universities, hospitals and children's aid societies. You say it's not the best way to go about it?

**Ms Swift:** There were actually two questions asked of

research with respect to inclusion of those three institutions. One was background information on the issues that might be raised that the committee might consider in whether or not to include the three.

The other question was specifically to go to legislative counsel and inquire of him what his opinion was. I should preface this by saying that of course Mr Revell had a very short time to respond to the request; in speaking to me, he said he had looked over the act and these were comments more or less off the top of his head. But in his view, it was perhaps not the most practical way of extending the principles of freedom of information to those institutions, that is, of including them in the existing act, because of two issues he raised. One was that there may be institutional differences that would be relevant and it might be more practical for an act to start with the problems that pertain to those particular institutions and then address them specifically in legislation.

**Mr Hope:** In his opinion, it's not practical. What if we were to have health officials come talk to him about their views on whether we should proceed in this, or any other officials trying to deal with allowing more freedom of information to the general public? I'm just trying to understand where they're coming from, whether it ought to be just to a legislative body or in legislation, and whether totally different legislation or incorporated in this legislation, if the officials of ministries feel it's the appropriate way to do it. That way, you're not getting pieces of legislation all over the place.

**Ms Swift:** In speaking with him, he didn't say it is impractical and that it's not possible but just that it may not be the most practical way. I don't think the upshot of his comments was that it ought not to be or it cannot be; it just may not be the most practical. If you have a different opinion from ministry staff or from others, the committee may decide that those arguments bear more weight.

**Mr David Tilson (Dufferin-Peel):** Some members may have sat on the public accounts committee. Public accounts experienced this same difficulty, specifically with the universities and the issue of academic freedom: whether the Provincial Auditor should look at all the finances of universities which receive their funds from private endowments and a substantial amount of moneys from the government. The difficulty for universities and hospitals is that a substantial amount of public funds goes to these institutions and there is a substantial requirement for accountability. I understand his comments, because we went through the same thing with public accounts.

My question is to you, Mr Chair. I don't know whether this committee intends to finish its deliberations on this subject. I know it is scheduled to hear delegations and try to prepare the report. I think it would be useful to hear representations specifically from the academic community, the universities or colleges, on this topic, because the word "accountability" keeps cropping up periodically and

the public, whose funds go to those institutions, is entitled to look at certain documentation, while acknowledging what was said about substantial private funding.

**The Chair:** I have to agree with some of the comments being made. This morning we're short on time to discuss it at full length, but I think it warrants further discussion by the committee as a whole.

**Mr Norman W. Sterling (Carleton):** I'm going to be very brief. First, legislative counsel was responding to a request from us and did it in short order. You may remember a question I asked of Mr Wright, the commissioner, about whether this would be an appropriate structure, to fit these three kinds of institutions into the existing legislation. His answer was yes, probably. There is a difference of opinion between legislative counsel and the commissioner. He referred us to the British Columbia experience, and perhaps our researcher, Ms Swift, could pursue that in terms of asking, "How does it fit?" Their legislation is very much designed on our legislation and they have fitted other institutions into it, so I'd be interested in hearing their experience.

**Ms Swift:** We've distributed copies of the BC legislation, but if you'd like, I can analyse it in more detail or look into it.

**Mr Sterling:** No, it's not a question of having the legislation; it's a question of knowing whether it works for these kinds of institutions. Maybe Mr Revell, because of the short notice, was not aware of the similarities of the situation, and he or you could look into that for us.

The last matter is that it was felt by the subcommittee—I did not tell Mr Tilson because the question never came up—that there may be some merit in writing a report on the institutions currently covered by the Freedom of Information and Protection of Privacy Act and recommending changes now, and then at a later date having the committee deal with including or excluding other institutions under this act. I don't want to lose the momentum of the briefs we have heard now, and try to write a report three months from now and remember what was discussed at the committee. We may choose to do that after we've finished hearing from all the people. I just wanted to relay to the whole committee that that was discussed at the subcommittee. We may do this in two stages.

**The Chair:** Mr Sterling, to give more direction to research, the subcommittee had a problem with how it fit, so you want to see how expanding our existing municipal freedom of information fits the BC experience. Is that what you want, whether it would fit into what we have?

**Mr Sterling:** There are two issues. First, we're dealing with the existing institutions, school boards and municipalities primarily, under the present act. That's what the submissions today are about. The other issue is whether we should recommend, as a committee, including other institutions under this act or under other legislation.

**Mr Jim Wiseman (Durham West):** We do have people who could answer that question now, if you want to bring them forward, but we're going to get a little behind with the presentations.

**Mr Sterling:** I think we should go on with the

submissions. We can discuss this later, when we don't have people before us.

1020

#### RENFREW COUNTY LEGAL CLINIC

**The Chair:** I call the Renfrew County Legal Clinic. We're a little late starting, but I think some of our presenters will be late because of the weather, so it'll give them extra time to get here. You have half an hour, but we'd appreciate it if you could leave some time at the end for questions from the committee.

**Mr Terry Kirby:** I'm Terry Kirby, the executive director of the Renfrew County Legal Clinic, located in Renfrew, Ontario. I've been a staff lawyer at the clinic since it opened in 1985. During that time, I've specialized in the area of social assistance law, representing social assistance recipients before the Social Assistance Review Board and the Divisional Court and doing law reform activities around that topic before the Transitions committee and other legislative committees that deal with those types of things.

The issue I want to address today and the issue that's of great concern to me is the way I see MFIPPA as failing to protect the identity of welfare recipients, specifically the way it fails to protect their identity from municipal politicians.

I feel this issue is of particular importance in Renfrew county. I'm going to have to describe to you how welfare works in Renfrew county because it's a little different from anywhere else in the province. In Renfrew county, the welfare system is what is described as an unconsolidated welfare system; in other words, in the rest of the province, except for two other counties, the welfare is administered on a county level. But in Renfrew county that's not the case: Each municipality administers welfare separately. In Renfrew county, we have about 90,000 people and 37 municipalities so some of these municipalities are quite small, some with as few as 600 residents, but they have their own welfare administrator and their own welfare system.

When MFIPPA came into effect, I certainly had a lot of hope that the act would do a lot to protect welfare recipients from councils and local politicians learning their identity. In fact, there were some big improvements when the act first came in.

Prior to that, for example, in Barry's Bay, Ontario, one of the municipalities in Renfrew county, if you wanted welfare assistance you had to come in front of council to explain why you should get welfare assistance. This was a public thing: They would book them all to come before the welfare committee of council and you'd have to come and explain why you should get it, and council itself would decide whether you would get it.

One incident I'm aware of when that practice was in place was that one of our clients was a high school student trying to receive welfare benefits that way and council informed her that she wasn't very bright and would probably be better off dropping out of school and going out into the workforce rather than trying to get welfare assistance for the time she needed to get through her education.



As I said, after the act came in, that changed. The municipalities in Renfrew county that required people to appear in front of the council quit doing that.

Unfortunately, the system that's in place still allows the municipal politicians in Renfrew county to learn the identity of the people receiving welfare benefits. The reason is that all the municipalities in the county except for the city of Pembroke have a practice where the local councillors sign cheques. They sign the welfare cheques in particular, and it's identified that these cheques are welfare benefits, so the local councillors know who in their community is receiving welfare benefits. The reason this is of more importance in an area like Renfrew is that some of the municipalities are very small. You can imagine that in a municipality where there are only 600 residents and 10 councillors, if the council sees this name they are going to know the person; they know who is receiving welfare benefits and who isn't.

In my brief I've tried to focus on how this knowledge has been abused at times by the local councillors. I've given you some examples of things that have happened. One of the worst of the examples I've given you is the example of the local reeve following the woman around in the grocery store and finally coming up to her, looking through her shopping cart and saying, "If you can afford to eat this type of food, you don't need welfare." This happened, and other things like that do happen.

Another example that came to my attention was that a person phoned and said they needed funds to survive. They were an elderly couple but not quite old enough to get the old age supplement, and they were wondering how they could survive through the winter because they needed fuel or wood, which is what we burn up in Renfrew county, for their house for the winter. I suggested they might want to apply for general welfare assistance, and the woman said, "No, I'm not going to do that." I asked, "Why not?" and she said, "Because if I do that, council will know I'm getting welfare assistance." I said, "How do you know that?" and she said, "I used to be the welfare administrator in the township, so I know that's what takes place."

Those are the types of things that happen. Having talked to quite a few former welfare administrators, I know local councillors will make comments about people and will tend to judge people on personal characteristics. Some of the examples I've given is that they'll state that someone doesn't need welfare because his mother has a large farm and could easily sell off 10 acres and give the money to the son, that type of thing.

This highlights the general attitude in certain areas about welfare recipients and the stigma that goes with that, that these type of people don't deserve it. This has been noted in a lot of previous studies dealing with welfare reform, in the Transitions, the Back on Track and the Time for Action reports, that there is a stigma attached to receiving welfare in this society.

The statute seems to recognize that too, in that it says it would be presumed to be an infringement of your privacy rights if that type of information were released. It's one of the categories that's listed. Unfortunately, the act doesn't go far enough to protect welfare recipients

from having that type of information released.

There was a famous case a few years ago about the Hastings council trying to get a list of welfare recipients. There was a successful court challenge to that and it was found that MFIPPA prevented that. Unfortunately, these types of activities haven't stopped. It's still going on in Renfrew county, and I understand that later on the people from the Sarnia clinic are going to speak about the Sarnia county council trying to get access to that type of information too.

The reason that was given in the Hastings case about why the council wanted that type of information was basically that council felt it had a role to play in preventing fraud and preventing abuse of the welfare system. From all the studies I've ever seen, abuse of the welfare system does not appear to be a big problem. The study that's quoted in Transitions puts at maybe 3% the welfare benefits people get as the result of some type of fraud. A study done last year in Ottawa-Carleton put it at 1%. Compared to other types of benefits or systems, even the tax system, this is a very low level of fraud.

The other reason I don't think the councillors should be playing a role in that is that I don't think they're qualified to detect fraud. In the clinic, I often get people who phone me up and say, "Do I qualify for welfare benefits?" and even though I've done this type of work for eight years, it still takes me about 20 minutes to get all the information and determine whether they qualify for benefits. It's a very complicated procedure, and I don't see how county councils could address this question since they don't have any training in that.

#### 1030

What happens, and what has happened in Renfrew county, is that the fact that local governments may know the identity of people who get welfare tends to discourage people from applying, even though they may need the benefits. I've given you the one example I told you of. When this type of activity happens, I think in the long run it ends up costing the taxpayers a lot more money, because if people don't apply for welfare when they need it because they feel intimidated, they'll have a lot more health problems and will put a lot more burden on the health system. They also may be being evicted from their premises and may have to call the clinic, and there may be court time involved. In the long run, people who need benefits should be given the opportunity to apply for them and know that their identities are going to be protected.

I've listed in my brief the recommendations I would like you to take out of this. Specifically, the main recommendation is that when you're defining "institution" in MFIPPA, make it clear that the welfare department is a separate institution from the municipal government and separate from the municipality. A recommendation also is that there be some kind of investigation or audit done of the practices in the unconsolidated counties.

The first recommendation was the recommendation the committee made to the Legislature after FIPPA hearings in 1991, and it doesn't seem to have been followed up on. I hope that coming out of these hearings, the committee will strongly recommend the recommendation that



was made before and press the government to do that.

**Mr Tilson:** Thank you for coming and giving us your observations on the legislation. Dealing with your first recommendation, it's ironic that you've come at this particular time: In yesterday's news, we had the federal auditor making comments about people receiving social assistance in particular who shouldn't be receiving social assistance.

**Mr Kirby:** I remember he was talking about the Canada pension plan disability benefits.

**Mr Tilson:** Yes, and he was saying it was quite substantial. We also had a municipal councillor from Thunder Bay here yesterday talking about welfare fraud, the observations she's made in her capacity as a municipal councillor. I don't know about studies. I'm a politician, and I've sat as both a provincial politician and as a municipal politician. There may or may not be studies. As a politician, I do in my constituency hear people telling me of people abusing the process. I observe people abusing the process—quite legally, but they're abusing the process. There's no question that there are people, in my observation as a politician, who abuse the freedom of information legislation to deceive the government to receive welfare. I know it's the minority, but there are people who do that. It's unfortunate, because it causes problems for those who genuinely need social assistance.

But I am an elected politician. A municipal councillor is an elected politician. They administer, through their staff, these pieces of legislation we're speaking of. In other words, there's the issue of accountability: Someone has to be accountable; someone has to observe whether the system is being ripped off.

There are serious accusations being made federally, there are serious accusations being made provincially. They may be well founded; they may not. We've had the federal auditor, we've had a municipal councillor—and it wasn't only the municipal councillor yesterday; it isn't just a single allegation being made. There's that issue of accountability. If this committee recommended to the Legislature that your first recommendation be adopted, how can I as a politician, how can a municipal councillor as a politician, be accountable?

**Mr Kirby:** First of all, you have to understand how welfare is administered by the municipalities. They administer welfare and pay 20%; 80% is paid by the province. The Ministry of Community and Social Services is ultimately responsible for how that money is spent. The Ministry of Community and Social Services does do audits of how the municipal government is administering welfare. In Renfrew county we have an officer who comes around and looks at the books to see how things are doing, to make sure that the people who are getting welfare are the people who are supposed to be getting it. There's an audit done on the general welfare accounts by the municipality too.

The point I'm making is that there are systems in place that do detect fraud. It's not a major problem. There are always going to be some people who abuse any type of system, but there are no studies that show that fraud is not being detected or that it's a major problem.

I've read Ms Dodds's submission yesterday. She wasn't recommending that municipal politicians would know the names of welfare recipients. I didn't see anything in her submission stating that, and that's the point I'm trying to deal with today. There are systems in place to detect fraud, and it is detected. It's not a major problem. If it is a problem, it's the problem you've identified: that when people do that, they discredit all the people who are receiving welfare.

**Mr Pat Hayes (Essex-Kent):** Thank you for your presentation. You're well aware of the presentation made yesterday by the councillor from Thunder Bay.

**Mr Kirby:** I've read the briefs.

**Mr Hayes:** And there's an article in the Toronto Star this morning: "Welfare Users Should Lose Privacy Rights, Politician Says," that they should be "stripped of all privacy rights to ensure they don't bilk the public purse." Your presentation really doesn't slant in that direction.

**Mr Kirby:** I would say I'm taking the opposite view.

**Mr Hayes:** Yes, I think so. In your line of work, over the years of your involvement with people on social assistance, I'm sure you run into those who feel that people on social assistance probably shouldn't have sugar on their cereal, for example, like other people enjoy, or shouldn't be able to watch TV and other things, that they shouldn't even be allowed to have a beer if they choose, because they are on social assistance, even though we know that many of these people are not on social assistance by choice but because of the economic climate in this country.

People do talk about fraud. Of course there's fraud; I don't care what system it is. But it's rather interesting that you have people come before these committees in government and complain about one specific group when there are others in our society who cheat on income tax and other things, and some corporations that get funding from all levels of government and seem to have their privacy protected. We seem to pick on the ones who are the most vulnerable.

1040

How do you feel we should deal with some of the examples of abuse suffered by people in the community? There are people who refuse to go on social assistance. Some may be very proud because they've had good-paying jobs and lost them, and others just don't want to be harassed. How do we deal with that as a government, or how do the social assistance people deal with that?

**Mr Kirby:** I don't think you can deal with that through MFIPPA, but I've always made the point to the Ministry of Community and Social Services that if people knew how their welfare dollars were being spent, I don't think they'd be as upset about it. I've made recommendations before that perhaps the government should educate people on how it's spending their money. There have been previous examples of the government trying to educate people around issues like drunk driving that have been very successful. If the government were to explain to people how that money is being spent, that, for instance, 40% of the people getting welfare benefits are



children, statistics like that, if it made the public more aware of that, I think there'd be less concern in the public about how the money's being spent.

**Mr Hayes:** On your recommendation that "the privacy commission should immediately engage in a comprehensive audit of the practices of welfare delivery in unconsolidated counties," you feel that system in Renfrew should be operated from one level, from the county itself?

**Mr Kirby:** I've made numerous recommendations over the last nine years that welfare in Renfrew county and in the other three unconsolidated counties should be delivered at the county level, that it would solve a lot of these problems. It's been impossible to get government to move on that, although they always agree with me that it's what should be done. In the meantime, if this is the system we're going to have, I'm making recommendations that the privacy of these people should be protected more under this act.

**Mr Hayes:** From a different angle, do you have any idea of how much money could be saved if it were consolidated? It seems like a pile of duplication in that particular county, with 37 municipalities, all with their own welfare department.

**Mr Kirby:** I don't have those statistics, but I think the Ministry of Community and Social Services does. They've done studies on that and have recommended to county council that the system should be consolidated. For some reason the county councils are reluctant to do that, but from speaking to the ministry, in counties like Leeds, the last county that went consolidated for its welfare, it's been very successful. Once it's done, the municipal politicians tend to like it.

**Mr Gilles E. Morin (Carleton East):** Do you have any statistics about the number of people who are intimidated by the fact that their names may be known by politicians?

**Mr Kirby:** No, I don't, Mr Morin.

**Mr Morin:** It would be quite interesting if you have any statistics. You say that statistics show fraud is very low. Perhaps the number of these people is also very low. Does it warrant a change in the legislation?

**Mr Kirby:** The problem is that the people who are intimidated about it are the people who are least likely to come forward and say anything. That's why I've only been able to present anecdotal evidence today that this is a problem, because these people will not come forward. When I brought a court action to challenge the practice of having the cheque signed, I could not get a client to come forward and do it because they don't want people to know they're on welfare. That's the problem. That's why they don't want the councils to know, but that's also why they tend not to come forward and tend not to want to bring court challenges. The Hastings case was very good in that they could find two people who weren't very worried about that and were willing to challenge the practice—there, any-

**Mr Morin:** To be on welfare or to be unemployed for some people, I know, is very humiliating. Is the same phenomenon happening with unemployment insurance?

Do you know of any cases of people who hesitate to collect unemployment because they know that certain politicians would know about it?

**Mr Kirby:** No, I've never heard of that.

**Mr Morin:** Why would there be a difference between welfare and unemployment?

**Mr Kirby:** Unemployment's a federally delivered system. While the Treasurer signs the cheques, it's done by a machine and they're sent out to millions of people. There's a lot of difference. I don't know that the members of the federal government know who gets unemployment insurance benefits, but I doubt they do. Local government makes it much closer, that I see this name of this person getting welfare and I actually know this person and their family.

**Mr Morin:** One of the recommendations that hopefully will be made pretty soon by Community and Social Services is to encourage direct deposit for the recipient.

**Mr Kirby:** They're already doing that now.

**Mr Morin:** Would that alleviate the problem you're referring to?

**Mr Kirby:** No, because that would only deal with people who are receiving family benefits through the Ministry of Community and Social Services, and not at this small level. You've got to realize that in some of these municipalities with 600 residents, there might be three or four people getting welfare, and to institute a direct deposit system is not practical.

**Mr Morin:** If I have any time left, I would be glad to pass it to Mr Tilson.

**Mr Tilson:** I represent small communities. As to your question of confidentiality, in some of the small communities I represent, everybody knows everything about everybody. Who are we kidding? They know everything, practically speaking. It would be literally impossible to keep that sort of thing going. They know where you're being paid from, where you're receiving your income, everything about you, good things and bad things. It's just a fact of life.

**Mr Hope:** That's not a factual statement.

**Mr Tilson:** It is a fact of life.

**Mr Hope:** I live in a small community too. They think they know everything about everybody, but they don't. You can't make that statement.

**Mr Tilson:** I just made it.

**Mr Hope:** I know, but it's not factual.

**Mr Sterling:** It's opinion. He can state his opinion.

**Mr Tilson:** I can say whatever I want to in this place. You may not like it, but that's what I can do.

**The Chair:** Mr Tilson, you've got the floor.

**Mr Tilson:** The conversation appears to have degenerated into nonsense, as it normally does with some of these people.

**Mr Kirby:** It's true that in small communities people know a lot about each other, but this would be one thing that one person wouldn't know about somebody else. The local councillor would not know who was getting welfare. They may know from some other way.



**Mr Tilson:** That's just my point.

**Mr Kirby:** Yes, they may find out because they know the guy isn't working and his UI has run out and what else is he living on, but that's quite different from using your government position to find out something. Finding out something in the community is a lot different from using a position as a politician to find out information about individuals.

**The Chair:** Mr Kirby, thank you for your presentation.

#### COMMUNITY LEGAL ASSISTANCE SARNIA

**The Chair:** The next group is Community Legal Assistance Sarnia.

**Mr Grant Timms:** My name is Grant Timms, and I am vice-president of our clinic's board of directors and co-chair of the board's consumer liaison committee. With me today is Margaret Capes. Ms Capes is the staff lawyer at Community Legal Assistance and will be handling the second half of our presentation.

We would like to thank the committee for the opportunity to appear before you today to present our views on the Municipal Freedom of Information and Protection of Privacy Act. Community Legal Assistance Sarnia is one of approximately 70 community legal clinics in Ontario offering legal assistance to low-income residents in areas such as Canada pension, workers' compensation, family benefits, general welfare and landlord and tenant matters. In addition, the clinic does extensive work in the areas of law reform, public legal education and community organizing.

Our consumer liaison committee, made up of low-income people with the support of the clinic's community legal worker, advises the board and staff on poverty law issues and acts as an advocate on these issues.

These hearings and review of the Municipal Freedom of Information and Protection of Privacy Act are, for us, timely, as a situation has recently developed in our community which speaks directly to the deficiencies as we see them in the act.

On November 24, 1993, Lambton county council passed a motion directing the social services administrator to make available to the current warden the complete list of welfare recipients. The purpose of this disclosure, according to the then warden, was to deter welfare fraud. It was his belief that welfare recipients, knowing that elected officials had access to personal and confidential information about them, would think twice before abusing the system.

1050

This warden's term was due to end December 1, one week after the vote. On November 29 and 30, he looked at the list. The new warden has stated publicly that she has no interest in looking at the list and voted against this motion to disclose. Proponents of the disclosure have apparently based their opinion about its legality on the provisions of MFIPPA, which my colleague will speak to, and a decision in 1992 of Mr Justice Byers in a case involving Hastings county council. Justice Byers struck down a resolution of the Hastings council to release the names of welfare recipients to all members of council. He

added, however, that a warden might have access to this information in a proper case.

In our judgement, Lambton county has not demonstrated and has not even attempted to demonstrate a proper case. Proponents have offered no other justification for the disclosure than the statement that they were receiving a lot of complaints from citizens regarding welfare abuse. However, the county has produced no evidence whatsoever to suggest that fraud is increasing, that it is widespread or even that it is more than a marginal problem; in fact, in media statements they've suggested just the opposite.

There has been no evidence to suggest that employees of social services cannot handle the problem. Lambton county has one of the lowest case-load-to-case-worker ratios in the province. In addition, a former RCMP officer was hired in September 1993 specifically to investigate potential cases of fraud and abuse.

Just how this disclosure would serve to discourage welfare fraud, other than through the intimidation of all recipients, has not been explained. It is difficult, moreover, to see how these certain councillors took seriously the Hastings county court decision. Indeed, also in September 1993, a motion was brought which, if passed, would have allowed the disclosure of recipients' names to all councillors. The most vocal proponents of the current resolution also supported the earlier motion, which knowingly and willfully disregarded the Hastings decision.

In taking this action, the county has disregarded the policies and directives of the province with respect to the interpretation and application of both MFIPPA and the General Welfare Assistance Act concerning the treatment of personal and confidential information. Indeed, two letters from the Ministry of Community and Social Services to the county's social services administrator directing him not to release the list of names were disregarded.

In our attempts to persuade council to rescind its motion to disclose, members of the clinic staff and consumer liaison committee have had the opportunity to speak with several of the councillors who supported disclosure, as well as with social services officials. For the most part, the reasons for supporting disclosure have little to do with fraud and more to do with misinformation and resentment or pre-existing biases against welfare recipients. A large percentage of the complaints from the public, we have been told, can be traced to an ignorance of social assistance regulations. Many people do not know, for example, that recipients are permitted to work, that being employed while on assistance is not fraud as long as earnings are reported.

Certain councillors have expressed anger over social assistance regulations and eligibility criteria. Some believe that benefit rates are too high, that it is too easy to live on assistance. Some believe that there are many people receiving assistance who do not deserve it. These are personal and subjective opinions; they do not constitute fraud on the part of recipients. However, the line between what these councillors feel is wrong and what constitutes the crime of fraud has been blurred. It seems



that the lack of clarity in MFIPPA is being used as a vehicle to express complaints about the welfare system in general. This of course is not an appropriate use of personal and confidential information.

We certainly do not expect the standing committee to address the issue of bias against and the stigma of social assistance. However, we ask that you consider these in your review of MFIPPA. Social assistance recipients need the protection of a clearly worded law, one that will preclude these negative attitudes finding expression in a legally discriminatory action such as the disclosure of personal information.

The need for clearly worded protection-of-privacy provisions in the law is demonstrated time and again in the clinic's experience. Unfortunately, the stigma of welfare still exists. At the clinic, we deal with many of the so-called new poor, people who've worked for years, built careers, but now have been forced to seek assistance. They are understandably uncomfortable discussing their personal situation with those close to them, let alone welfare case workers, but they must reveal everything about their lives during the application process. This can be a humiliating experience.

The only consolation is the assurance that the information will remain confidential. It says so on the forms applicants must sign. This information often includes medical information. The clinic has dealt with persons with all manner of medical problems, including people with HIV and AIDS. They must reveal this information to satisfy eligibility requirements but have every right to expect that the information will go no further.

While it is true that in Lambton county only a list of names and addresses was disclosed, this was personal and confidential information as defined by the act. If this action is permitted, we believe a principle will be established. Recipients are rightly concerned that this will lead to disclosure of other confidential information. If the intention of disclosure is to allow county councillors to root out welfare fraud and determine whether eligibility criteria are being met, they clearly cannot accomplish these tasks by looking at a list of names only. They will need access to financial, medical and other personal information.

Clearly worded protection-of-privacy provisions are needed, because it is clear that county councillors feel safe in taking this action. They may well have felt that there would be no repercussions, knowing that recipients do not have the resources necessary to protect their legal rights and knowing, more importantly, that recipients, due to the welfare stigma and due to the desire to keep their private lives private, will be unlikely to fight for these rights in a public forum.

Our experience bears this out. Community Legal Assistance has explored the possibility of applying for a judicial review on this case, as was done in Hastings county. To do this, we would need a client, a person whose name appeared on the warden's list, but potential clients fear repercussions. They fear that benefits will be cut off in retaliation by the county. They fear public ridicule. Most of all, they fear their children will be subjected to abuse at school by their friends, by their

friends' parents and even by teachers.

We see laws such as MFIPPA as mainly preventive. Their first intent is to prevent damage being done to people by the unwarranted and unnecessary disclosure of personal information. Provisions which emphasize these preventive aspects of the law are a necessity where vulnerable people are concerned. It should be incumbent on those wanting access to personal information to prove their need, and this information should be released only with the person's consent. Apparently, Lambton county believed, given its interpretation of MFIPPA, that neither proof of need nor consent was required.

1100

**Ms Margaret Capes:** Today I've been asked to add comments about our recommendations for change around the municipal freedom of information and privacy act based on our experience in Lambton county. It's very clear that our clinic and many members of our community are at odds with Lambton county council about the interpretation of this law. As long as it's unclear in its application, we have the feeling that we will be continually fighting Lambton county council; that motions of this kind will continue to arise over and over. It's our recommendation within the submissions we've presented to you that these vague areas be cleared up once and for all.

It's our recommendation, along the same lines as Mr Kirby has already suggested, that for the purposes of general welfare assistance and information relating to such recipients the head of the institution under the act be designated as the department of social services in each municipality; and that any information that's being requested about general welfare recipients or their level of benefits be sent to the department of social services as the head of the institution; and that the department head would assess whether the release of that personal information is appropriate under the basic workings of the act.

You may or may not know, but there is a presumption under the current wording of the act that that is personal information and that it is not to be released. It's our recommendation that in all cases, if the department of social services in each municipality received this, there would be consistent application of the release of this information or not.

A side issue around that point is that under the current system, if someone wants information under MFIPPA, any private citizen has to make a special request, using a specific format, to the head of the institution. If a person's personal information is a part of that request, that person is to be given notice of the fact that the information may be released. If that person objects to the release of personal information, they can appeal that to the Information and Privacy Commissioner.

In the situation in Lambton county, Lambton county council felt that given the current wording of the act, it did not have to go through that specific procedure and, as a result, no person on the general welfare list in Lambton county was notified before their names were released to the warden and therefore did not have the opportunity to exercise their rights of appeal.



As Grant has already mentioned, and Mr Kirby earlier, the stigmatizing effect of that information being released, it's our recommendation that we create a level playing field here, that everybody under MFIPPA has to make requests in the same format consistently. Whether you're a private citizen, a county councillor, a warden, a lawyer representing a client, everybody should have to go through the same procedure in terms of applying for the information, at which point the information could be either released or not released, based on the presumptions and exemptions in the act.

Something we've discussed about this situation, and I ask that the committee members consider this fact, is that the motion at Lambton county council allowed the warden to look at the list of general welfare recipient names. You may want to ponder this point: If I wanted to find out if the warden of Lambton county were on general welfare assistance, I wouldn't have the opportunity to simply make a motion and then go and look at the list. As a private citizen, I would have to apply through the MFIPPA procedures to the head of the institution, and it's very likely that information would not be released to me as a private citizen. And, under those circumstances, the warden would be notified of the fact that I have made that request, and if it was even being contemplated that it was going to be released they could appeal that decision to release to the Information and Privacy Commissioner.

That's an opportunity that was not given to many, many people in Lambton county in November 1993 who are on general welfare assistance. Their names were released. It seems to me that if one scenario would apply in the one case, it should apply to all of us, regardless of our position in the community.

**Mr Bob Huget (Sarnia):** Thank you, Margaret and Grant. I appreciate your taking the time to come today. I want to touch on a few of the comments you made. I want to start by referring back to a comment Mr Tilson made to the presentation earlier, in terms of accountability and elected officials' perception of accountability, and that someone has to be accountable in overseeing all this abuse, alleged.

Has it been your experience that an elected official, a politician like me—I'm a politician in Lambton county—has any of the expertise that would be required to determine eligibility, disability or any other requirements of the GWA? Is that an easy thing to do?

**Ms Capes:** I've been working at the clinic almost five years now, and at least one third of my case load is in the area of social assistance representation. It would be my opinion that there are fewer than a hundred people in this province who fully understand the workings of the general welfare act. I would not think that a person who has a copy of the act could necessarily determine from a fact situation presented to them, let's say by the release of a name and their circumstances, whether in fact that person legitimately qualifies for assistance.

You've touched on a point that's very important. I think there's anger out there about what's in the general welfare act and who should be eligible and who shouldn't. That should not be taken out on the people

who are on assistance legitimately.

**Mr Huget:** I think people in this committee will know that the province administers family benefits all through the province, and as an elected official in my community, I don't feel the need to see the names of the people who are receiving family benefits. I'm not in any position to determine whether they should or should not receive them. I leave that to professional people, and I would assume that's probably a logical thing to do in terms of GWA.

However, I do understand that for the politics of poverty, it provides some press and provides election campaigns on the backs of people in my community who can least afford to have one more brick put on their backs.

The stigma issue is an important one. You've raised a couple of examples in your presentation. I could raise hundreds of examples of people who visit my office on a regular basis, who are receiving benefits and are subject to the kind of ridicule and attacks on the fact that they are in an unfortunate situation, that makes their self-esteem drop to below zero. At the same time, elected officials are asking people to feel good about themselves and go out and change their circumstances. Well, it's damned hard to do when you've got people loading that stigma on you on a daily basis. It's true. It happens.

I also want to focus on the issue of access to information. The point you raised about the warden is a very interesting one and I want to go over that again. If what you are saying is correct, if I were to go to the warden of Lambton county or any other county and demand to know whether that elected official, whether it's a county politician or any other, is receiving welfare assistance or has ever received welfare assistance, what would be the response and what would I have to do to get that information?

**Ms Capes:** From my understanding of MFIPPA and my experience with using MFIPPA in my own case work, you would have to complete a form. It would be sent to the head of the institution. In this case, as the act is currently worded, it would go to the warden himself or herself because they are considered the head of the institution in Lambton county as a bylaw's been passed to that effect. That individual would assess whether or not that personal information should be released. I point out that there is a presumption under MFIPPA that says personal information relating to general welfare assistance is to be presumed to be information that should not be released, so I would expect that if you put in that request, the response would be: "There's a presumption against the release of that information. I'm sorry, you're not going to get it." The end result would be that if you received that you could appeal that to the Information and Privacy Commissioner for a second look at the decision. Or, if the decision was to release the information, the warden would have the opportunity to appeal that decision because they may object to that personal information being released. That's the current situation.

**Mr Morin:** I am inclined to agree with my colleague Mr Huget that I have no interest whatsoever in finding out who is receiving welfare. I'm not qualified to deter-



mine whether they are entitled to receive it or not.

But I am concerned about fraud. Let me give you the reasons why. I recently conducted a survey in my own riding: 7,000 cards were sent, and I was very fortunate to get a 35% reply, which is totally unusual. One of the questions asked what the main issues were that people were concerned about, and 80% responded "fraud."

As long as government is not capable of coming up with a system which would at least alleviate that fear the public has about fraud, especially when economic times are bad, like now, the ogre of fraud always comes out. We must find a way to prevent fraud so that the public can say: "We have a system. It is our responsibility to help the people in need, it is our responsibility to help the people who are without work, but we want to be sure that money is well spent, that the money goes to the right person." This is the concern we all have here today.

1110

I agree totally with you that the persons responsible should be well qualified to determine whether that person should be on welfare. That's without any question. But you must also point out the problem you are facing, because we know there is fraud. It's not as big as we may expect, but just because I have to pay taxes—I'm talking on behalf of my constituents—and I accept the fact that I have to help people in need, I want a system in place that will make sure these moneys are well spent. Basically, that's all it is.

When you hear politicians saying we should take stringent measures to prevent fraud, this is what they mean. It's what I mean, anyway. I'm voicing an opinion I receive from all my constituents, rich or poor. We have to tackle that issue to remove the fear of the public. It cannot be 100% foolproof, but we must make an effort to come up with a system to say we trust the system; it's well administered. Do I make my point clear?

**Mr Timms:** Yes. That issue of accountability has come up in our conversations with county councillors in Lambton, and it's a legitimate concern. But if somebody understands the application and review process, it's not as if someone can apply for assistance and then they're just left alone. Reviews are done every six months or on a monthly basis in terms of income reporting and these kinds of things, and different people have different eligibility requirements. If you're employable, a condition of your eligibility is that you're out there looking for work, and you have to provide documentation of where you have looked. If there's any government system that has a lot of checks and balances, it's this one. People are monitored every step of the way, not on a daily basis but certainly on a monthly basis. It may be that one reason the incidence of fraud is so low is because of all these checks and balances being there. People are accountable.

I'd have to agree with Mr Kirby: If the public were educated about the process and the kind of information applicants and recipients have to provide, whether at a municipal level or at a provincial level, it would certainly ease their fears. I don't think anybody who hasn't been through the system would welcome going through that kind of process, because it can be a degrading and humiliating experience.

**Mr Tilson:** We're all expressing the same concerns. There certainly is a need and a desire for privacy, in the same way—I don't know whether you were here earlier when we were talking about universities. Some of the other committees in this place have debated the issue. Universities don't want government interfering with their financial affairs because of their need for academic freedom, yet the taxpayer is putting substantial amounts of money into a university and then the citizens see tuition fees going up and other expenses going up and they question it. This word "accountability" keeps cropping up, notwithstanding there's a desire for academic independence.

The same comparison could be made with exactly the issues you're raising. No one would like to see their name in headlines or in minutes of some county council or municipal council meeting or whatever, that they're receiving welfare. No one in this room—no one, period—would want that. I understand that. But there is that issue out there, as just stated earlier, that the politician must continue to deal with. Whether they're qualified or whether they're not qualified, there is the need to make sure that people are eligible and that there's no fraud. They're not going to be the investigators, but someone has to watch the system. I believe that's what the politician's for. It may well be that we may have to find another avenue of approach—

**Mr Huget:** It sounds like George Orwell to me.

**Mr Tilson:** I'm going to ask the same question that's already been asked and perhaps rephrase it: that whole issue of accountability, of the need to obtain privacy but the need to have accountability.

**Mr Timms:** We hear that a lot: Are the people who are receiving assistance accountable? In our opinion, they certainly are. With all respect, politicians could take more of a leadership role in educating the public to show them the system. If the general public is concerned about how the system is managed, maybe they should take some responsibility on themselves and look into it, because a lot of the information is available. Somebody could read the general welfare act, could go and ask a case worker for a sample application or something like that to see what people have to go through, and then they would get a pretty good idea of how their money's being managed. But I don't think people do that.

**Mr Tilson:** Who would the head of the social services department be responsible to?

**Ms Capes:** This is a good question. In our experience in Lambton county, it appears that the head of the department of social services in Lambton county is answerable to at least two parties, and this is part of the problem. Under section 3 of the general welfare act it states that the province has responsibility through the Ministry of Community and Social Services to see that the act be administered properly, so they've got that master. Then they have Lambton county council saying to them, "We also have responsibility to make sure that taxpayers' moneys are being appropriately spent, so let's see the names."

**The Chair:** Time has run out. Thank you for appearing. Have a safe trip back to Sarnia. Is it warmer there?



**Mr Huget:** No.

**Mr Hope:** You've got to go a little farther south, to Chatham.

ONTARIO LEGAL CLINIC STEERING COMMITTEE  
ON SOCIAL ASSISTANCE

**The Chair:** The next group is the Ontario Legal Clinic Steering Committee on Social Assistance.

**Ms Nancy Vander Plaats:** Thank you for the opportunity to talk to you today. We are the Ontario Legal Clinic Steering Committee on Social Assistance. I'm Nancy Vander Plaats and I work at the Scarborough community legal clinic. With me is Ian Morrison, executive director of the clinic resource office.

You've heard from two individual legal clinics about the experiences they've had in their own areas and why MFIPPA is important and should be strengthened. We represent all the clinics. There are some 60 legal clinics in Ontario that handle general welfare cases, and we're a representative body, with regionally chosen members from across the province, so we hear people expressing to us what happens all over Ontario on matters related to welfare and family benefits.

You've heard specific examples of invasions of privacy. The committee members have expressed concerns about accountability, that maybe there's a problem that privacy is protected too much so that we can't deal with fraud and abuse.

Let's go back to the position of the person who has no money, who is in need and needs to apply for welfare. Do they have privacy rights? Basically, no. They don't have privacy. They have to go to strangers and disclose everything about their lives, of course all their financial situation, but besides their financial situation they have to disclose all kinds of things about their personal lives: who may have fathered their children, whether they have any boyfriends, whether they have boarders or someone else living else with them; their children have to provide information from schools and so on; they have to provide letters from employers or from their landlord. All kinds of people get involved in the application process and have to provide documentation for welfare. People don't have much privacy. That's unavoidable. I'm not saying they should have privacy. You can't avoid that when you have people applying for assistance. You have to ask questions and determine eligibility.

1120

That's just where we should start: The privacy is already invaded. However, MFIPPA limits that invasion of privacy somewhat, puts some protections on it. It says your privacy should only be invaded to the extent of those who really need to know: Professionally educated and legally responsible welfare officials are the ones who should get that information, and other people shouldn't. That's the context. The question is, does MFIPPA protect privacy enough, or too much, or what?

The stigma attached to welfare has been alluded to already, the fact that people are so afraid of being identified as in need of welfare that they might not apply even when they're in real need. It's common and it's probably always going to be the case, but I'd like to

emphasize again some of the effects of this. It's been mentioned already that 40% of welfare recipients are children. The stigma on children is probably the greatest problem. After all, even if sometimes people blame adults for being in a position where they need welfare, you can't blame the children.

Yet even when all their rights are protected, high school children, for example, have to get letters from the school proving they're in attendance at school and making satisfactory progress and so on. We've heard many examples of how that has humiliated children, teachers who use that against those children, how other people find out in that way. The same thing happens with employers. When people have to provide letters from employers, they can get harassed and have problems that way.

The issue of accountability is the other one I wanted to address. The system has a lot of checks and balances built into it. Perhaps there could be more. The ministry just announced a whole new computer system. One of Ms Dodds's points was that the computers aren't hooked up so maybe people could apply in different municipalities and get welfare. Certainly that kind of fraud should be stopped and, luckily, the technology now exists so that it can be stopped. There are many ways to deal with accountability, to address the issues. However, it's not a good idea to try to address it by making the identities of welfare recipients known to people who don't have a need to know and a real reason to know to judge whether they're eligible.

With those general comments, I'm going to turn to Mr Morrison for our specific recommendations.

**Mr Ian Morrison:** We've made three specific recommendations in our brief. Two of them essentially follow on things you've heard this morning, and we will treat them quite briefly.

The first one is that subsection 2(1) of the act should be amended to define the social services department of a municipality which has appointed a welfare administrator to be a separate institution and to designate the welfare administrator as head of the institution.

The reason we've made that recommendation you've already heard in considerable detail, and I won't run through all the points. We've examined whether there is some other way of dealing with that issue under the current legislative framework that would not require an amendment to the act and we have concluded that there isn't. We don't believe that relying on the judicial process is an adequate protection. We have indicated that although the Ministry of Community and Social Services is opposed to the kind of thing that happened in Hastings county and Lambton county, it's very doubtful that it actually has the legal authority to do anything about it, so we believe the only sure way of ensuring this protection of privacy is an amendment to the act.

I appeared before this committee a couple of years ago when it was reviewing the provincial act, and although we were talking about the provincial act we touched on some of these municipal matters. This committee made the same recommendation at that time, and we are simply asking you to affirm that recommendation, this time in



the context of MFIPPA.

The second recommendation we've made is that the privacy commission should immediately engage in a comprehensive audit of the practices of welfare delivery in unconsolidated municipalities. The unconsolidated municipalities are only a small part of the province. Unfortunately, it's clear—I think this was clear from Mr Kirby's presentation—that all the problems of welfare delivery in unconsolidated municipalities cannot be addressed through MFIPPA. I was assured yesterday by people from the Ministry of Community and Social Services that a decision would be made, hopefully within the next six months, on the delivery agent for a revised social assistance program in Ontario, and we certainly hope that will deal with many of these problems.

However, in the meantime these issues do exist. We don't know what that decision about service delivery is going to be. We also don't know for sure that there will in fact be new social assistance legislation. Although it's possible that that issue will become moot, unfortunately there are no guarantees that that's the case and we would therefore still ask that this committee address that issue.

The third recommendation we've made is one that wasn't touched on by the others, so we'll spend a little more time on it. It flows out of something that Nancy said. Our recommendation is that the act should be amended to provide that in the case of release of information to determine eligibility for welfare benefits, the institution—and of course, this follows on our recommendation that the institution should just be the welfare department—must consider alternatives to disclosure of the identity of the recipient and must demonstrate that it has considered all reasonable alternatives to the proposed use or disclosure, regardless of whether the person concerned has signed a blanket consent to disclose as a condition of applying for assistance.

Nancy mentioned that already considerable information about the identity of welfare recipients is disclosed to all kinds of people when somebody does apply for welfare, and this applies everywhere, to Toronto as much as it does to Barry's Bay. There are really two general categories of release. Information is released to other branches of government in order to verify all kinds of information other branches of government have, but it's also released to members of the public who have some relation to the recipient: landlords, employers, potential employers, past employers, all that sort of thing.

1130

In its review of MFIPPA a couple of years ago, this committee made this recommendation in essence, except for the last part, that says "regardless of whether the person concerned has signed a blanket consent to disclose as a condition of application for assistance." We ask that that be added because we believe this information is often disclosed in circumstances where it's not necessary and where there are other reasonably reliable ways of getting the same information.

If the part about whether the person has signed a blanket consent is not added, it really undermines the entire purpose of that protection in this context. If you apply for welfare, you must sign the general consent

saying they can release the information to anybody. You have no choice: If you don't sign that consent, you cannot get welfare. It's not a free consent. There's no meaningful consent to the release of information in those circumstances. We think the onus should be on the institutions to identify the least intrusive ways of obtaining this information.

On the whole, I think we would all admit that it's not a problem when information is being shared between government departments, as long as it's information that actually is needed to determine eligibility. Implausible as it may seem, I'm actually going to acknowledge that somewhere in her brief Evelyn Dodds had a valid point, which is that as things stand, that kind of information sharing is unduly awkward and there are unnecessary barriers to that. I would add that it actually works against clients' best interests because it's sometimes very difficult for the client to get information they need from other government departments to show their eligibility, so it can even cost them a great deal of money.

The purpose of this recommendation is not aimed at intergovernmental sharing of relevant information. It's aimed at the release of information to members of the public who have no obligation to do anything with respect of it. This covers an almost infinite number of situations, and we couldn't run through them all here. But we're suggesting that there be a statutory onus on the institutions themselves to review their various practices for gathering different kinds of information and in each instance to consider whether the release of the person's identity is demonstrably necessary to ensure that the necessary information is being collected.

That's all I will say with respect to our recommendations. Generally, of course, we support the provisions of this act. We believe the protection of privacy indicated in the act is already a matter of public policy in Ontario. At this time, of all times, it's particularly important that that protection be maintained. There's a great deal of public concern about abuse of social welfare programs. In many cases, this concern amounts, I would say, to hysteria.

I'd just finish off with two things to put in perspective the concern about abuse of social programs. We've heard several times from people on the committee about constituents calling them up, complaining about fraud, complaining about the abuse of social programs. To some extent, I think that was answered by the previous presenters, but to add one more piece of information to that, the Metro Toronto welfare department a couple of years ago instituted a welfare hotline where people could call up and anonymously denounce people they thought were committing welfare fraud. They recently released the statistics about the results of the operation of that hotline for a couple of years.

In 1992, in just less than half the cases where people called up alleging that somebody was committing welfare fraud, the person reported was not even on welfare. Of the people who were on welfare, the vast majority were investigated and it was found that there was no impropriety. Ultimately, legal action was only taken in something like 1% to 3% of the cases referred to them. That is consistent with every study that has ever been done on



the volume of losses to social welfare fraud. It's consistent with national studies, provincial studies, studies that've been done in other provinces.

The issue of accountability is important. Of course there is some money lost to welfare fraud, although I would point out, just to put that into perspective, that the estimated losses to tax evasion in Canada are something in the order of \$5 billion to \$20 billion per year. That's more than Ontario's entire annual welfare budget.

In closing, we would ask this committee to reaffirm that the million and a half people on welfare in Ontario are citizens of this province who are entitled to the same kinds of rights and protections as any other citizen and not a subclass of people who've abandoned all claim to humanity because of their need.

**Mr Murray J. Elston (Bruce):** We have a problem here. It's an interesting one for me, because it is based on an intellectual battle about accepting recommendations of some people about disclosing the salaries of every person who works in the public service or receives taxpayer dollars, yet retaining the right not to publish information about people receiving social assistance. It's a difficult step to do one and not the other. Can you help me out on that? How do you warrant disclosing information about people who work, plus their benefits and expenses, while not providing information about people who are receiving taxpayers' dollars, in a different sense, but none the less taxpayers' dollars?

**Ms Vander Plaats:** I don't really think that's a fair comparison, but I can see how it's a conundrum for you.

**Mr Elston:** Because that would set up a second class of people, right?

**Ms Vander Plaats:** The people who work for the public sector then are a second class if it's disclosed.

**Mr Elston:** In agencies, yes.

**Ms Vander Plaats:** I don't support disclosing of salaries of everyone who works, so it's hard to answer that. I think people should have some privacy rights, so that's not a fair thing to ask.

**Mr Elston:** But it's been put to us that we at least consider it. The minister responsible for Management Board has suggested we think on it, not that he's saying he's going to do it, but he has received direction from cabinet to follow up on Mr Laughren's initiative that the top five officers of every publicly traded company have their salaries disclosed. What I took from Brian was that it really meant he was leaning towards coming up with a policy for disclosure of public salaries. While you say it may not be fair to ask you, the problem for me is that I can't differentiate between one group of recipients and another without logically having to create the two classes that were just spoken about by Ian.

**Ms Vander Plaats:** But there is a differentiation now. It's true, sometimes bureaucrats or politicians are certainly maligned a lot, but not in the same way.

**Mr Elston:** That's part of the job description.

**Ms Vander Plaats:** Right. You do have a choice about whether or not to run as well. It's a public service that you do. But people who are forced to apply for

welfare don't have a choice. They have tried everything else they can and have nowhere else to turn. There isn't the same kind of stigma, there isn't the same concept that everybody who works for the government are lazy bums. It doesn't apply in the same way, I don't think.

**Mr Elston:** There's a sizeable group of people who just fainted in that corner.

**Mr Tilson:** Yes, and some politicians too. I get back to questions that are asked of me, that society or government, the provincial government or the municipal government, is making it easier and easier for welfare fraud. I don't know whether that is a legitimate allegation or not. The fact is, the allegation's being made. You people have obviously thought about this and other things. Can you tell me what an appropriate answer to such a comment would be?

**Ms Vander Plaats:** I'd say the government is doing a lot to deduct fraud and they're doing more and more all the time. You should tell your constituents about some of the things they're doing. Besides putting in new computer systems, they have procedures called enhanced verification, where they're reviewing files of recipients more often, they're checking up on more details, they're requiring far more documents. We think many times that goes overboard and some of those procedures actually deny benefits to people who need them, but nevertheless they're doing them. I repeat: There are incredible hoops people have to go through.

One of Ms Dodds's points was that people don't need verifiable ID to get welfare. Well, they certainly do. They need very specific kinds of ID and they've tightened that up: A driver's licence or something isn't good enough any more.

There are a lot of procedures in place already, you should tell your constituents.

1140

**Mr Sterling:** What do you think about doing away with the social welfare system altogether and just having guaranteed income?

**Mr Morrison:** I'm not sure that's really within the mandate of the committee. There isn't a short answer to that. There is merit to the proposal but it depends on how it's constructed. I think the answer is that the devil is in the details. It would depend on what kind of guaranteed annual system you set up.

**Mr Hope:** In the three minutes I have available to me, I'll again refer to the article in the Star, that "the right of the public to protect its money must outweigh the right of the individual to privacy," the point made by Mrs Dodds during her presentation.

You commented about the system itself being streamlined, cleaned up, with better communications with Quebec, Manitoba, the federal government. You're probably well aware that the provincial government is embarking on that, which was also indicated to the Provincial Auditor when all the stuff was being talked about in terms of possible fraud.

I notice in your numbers that you make reference to the Quebec welfare police and also to the corporate side of it. Mrs Dodds is worried about spending taxpayers'



money for people to keep food on the table for the children. She forgets to mention these individuals who can corporately continue to feed their families and everything else on \$100,000 or \$200,000 a year. She forgets to mention that and I'm glad you brought it out.

The other part brought out was political responsibility. I believe you're absolutely right. A lot of people do not know what it's like to apply for social assistance. We have leaders of provincial parties running around this province saying that welfare recipients make \$17 an hour—irresponsible—which then leads the public to believe this. I know the leader who did it because he did it in my riding. I won't mention who.

**Mr Tilson:** But the initials are "Michael Harris."

**Mr Hope:** I want to focus on an important part of your presentation, and rightly so, because I am in the Ministry of Community and Social Services. I've listened seriously to the concerns made by Renfrew about the municipalities—if you want to talk about cost savings, I'm sure there must be some there—and the concerns you raise about the privacy issue. We have to address this, because it's amazing the way economic situations turn social mentalities into political 1994 election campaigns.

I wanted to use my full three minutes, because with Mrs Dodds I only had one minute and I would have loved at least 10 or 20 with her.

**Mr Morrison:** Obviously, we tend to agree with you. One of the most difficult things working in this area is that welfare is one of the most myth-laden topics in our society. Along with the consistent studies that show there is not nearly as much welfare fraud as people think are the consistent studies that show that large numbers of the public have wild misconceptions about the welfare system. People have wildly erroneous ideas of how much money you get on welfare, what you have to do to qualify and so on.

It's very difficult to deal with those perceptions. The reason it's public policy in Ontario to protect the identity of people on social assistance, who are the very poorest people in the province, is because of the difficulties of overcoming those kinds of perceptions.

It is one thing to have an informed debate about what is being done about fraud, what can be done to prevent it, legitimate accountability things, but the other is to deal with the lives of people out there in the province, in their communities, who, on top of everything else that has happened to them, have to deal with the fallout of often having lost everything after a lifetime of working, who apply for social assistance and suddenly find out that in the eyes of everyone, they're a second-class citizen.

**The Chair:** Thank you for coming today.

**Mr Elston:** An administrative inquiry: Mr Morrison actually complimented Mrs Dodds, and I wonder if we could send the transcript of that to Mrs Dodds for her edification.

**The Chair:** I think Mrs Dodds will be reading it. I don't think she'll have a problem.

**Mr Sterling:** On a point of order, Mr Chair: I wasn't able to be here yesterday afternoon for Ms Dodds, but she obviously made quite an impression on everybody

here. She's been quoted more than anybody else. I'm amazed.

**The Chair:** We'll have a quick Hansard out for you.  
VICTORIA AND PETERBOROUGH  
COUNTY MUNICIPALITIES

**The Chair:** The next presenter is Mr John Ewart.

**Mr John Ewart:** Thank you, Mr Chairman. My name's John Ewart. I'm an associate with the law firm of Howell, Fleming in the city of Peterborough. As solicitors of that firm, we represent about 20 or more local municipalities both in Victoria county and Peterborough county, together with boards of education, as well as counties themselves.

My submission this morning is on behalf of those municipalities, to convey to this committee the difficulties the municipalities seem to be experiencing in administering the act. These comments are derived from the experience since 1991 of dealing with the Municipal Freedom of Information and Protection of Privacy Act.

With me this morning is Mr Stephen Kaegi. He is clerk-treasurer of the townships of Belmont and Methuen. They're one of our municipal clients.

With respect to the act itself, I wish to deal with the negative aspects as conveyed to us by our municipal clients. However, in fairness, there are a couple of what I'd consider positive aspects which are worth pointing out to this committee.

First, there's the element of formality. It has been the comment of our clients that since 1991 the act has imposed a formality within the municipalities in dealing with requests for information. Prior to 1991, it was been the experience that many people perhaps would deal with the request for information, but since the coming into being of the act in January 1991, the act has required that the decision-making be centralized in one person, or the head itself. I think this is a positive experience of the act.

The second factor, which is very similar, is accountability. One person is now responsible for making a decision with respect to the release of information requested by members of the public. Again this is being viewed as a positive aspect.

The third aspect is record management. If anything, the act has imposed upon our clients at least the need to keep proper records, not only recordkeeping but record storage as well as record retrieval. It's never known when a member of the public will be requesting certain information which is in possession of the municipality or the institution.

If those are the positive aspects, the negative aspects are as follows: First is the cost. One common area our clients have conveyed to us is the issue of cost in dealing with this act. It's been the experience of our clients that the implementation of the act has resulted in additional costs, as well as sometimes the requirement of additional staff time to comply or complete a request from a member of the public. This comes at a time when the institutions are required to cut back both in staff and resources, and oftentimes a request for a complex series of documents or a large number of documents imposes a burden upon the municipalities.



It's also been our experience, more often than not, that the municipalities have incurred legal costs in dealing with requests. This comes more often at the time a request is denied and appeals forthcoming. Nevertheless, it seems a common concern of the municipalities that they're often not really quite sure what is being requested of them by members of the public and in order not to run afoul of the act, we often become involved even at the very first instance, not, say, at the level of an appeal. Again this comes at a time when most ratepayers are very critical of any further expenditures by the municipalities, including that of legal fees.

1150

A second aspect our clients seem to have concern about is that the whole procedure itself seems to be of an adversarial nature. Once the request for information is denied and an appeal commenced, it does put the parties in what would seem to be an adversarial position. Aside from the legal costs incurred in dealing with this type of appeal, there are expected results which follow from any adversarial process, namely, that of bad feelings. When a member of the public is denied access to the record, that member of the public will not likely feel that the municipality has acted in his or her best interests, or indeed will feel that the municipality has something to hide. This seems to be a very common complaint among our clients.

The third concern is the type of documents the act deals with, as well as the language of the act itself in administering the act. It's been our clients' experience that the problem in administering the act, which often leads to appeals, arises from the numerous situations where the act either provides subjective or objective meanings or provides few guidelines, if any, about how the act should be interpreted. Clauses and phrases throughout the act such as "could reasonably be expected to," "compelling circumstances," "consistent with the conditions or reasonable expectations of disclosure," "unjustified invasion of personal privacy" or "compelling public interest," all of these clauses, offer few guidelines and impose real difficulties upon our clients in administering the act and it often results in our involvement at that stage. If the suggestion was that the act would allow for the free flow of information at a local level by the head or the local municipalities or their officials, it hasn't had that result, at least through our experience.

One particular example I've been asked to put forward to this committee involves a situation of one of our municipal clients who actually received a copy of an OPP incident report from the Ministry of the Solicitor General. That document was received through the municipality's own FOI request. The reason the document was requested was that there had been allegations of wrongdoing on behalf of council members. The request was put to the Solicitor General's office in an attempt to find out not only the status of the investigation but any conclusions or finding reached by that branch.

This document was received into correspondence by the municipality and therefore became a public record pursuant to section 73 of the Municipal Act. Being a public record, it was therefore available to the public. As

a result of receiving that document into correspondence, a complaint was then lodged with the commissioner's office by the same individual who had made the allegations against members of council. The township in that situation was then found in breach of the act in receiving that information or that document into correspondence, despite the fact that it was the head's decision that compelling public interest in the disclosure of that document outweighed the purpose of the exemption set forward in the act. That's just one example.

Another is the subjective interpretations possible of many sections of the act. One in particular is subsection 8(4) of the act, which deals with routine inspection by a branch of a law enforcement agency. Nowhere in the act is the definition of "routine inspection" set out.

The final what we consider to be negative aspect of the act is that of the requests themselves. Oftentimes it's not clear what the requester is seeking or the purpose for which the requester is seeking the information. It is recognized that there are provisions in the act to seek clarification of the nature of the request. It doesn't avoid what are known as "shadow applications," applications being brought by individuals who have no interest in the information sought but it was only to pass it on. We have seen this on several occasions, particularly when there is either litigation ongoing with the municipalities or other hearings involving the municipalities as parties to a procedure.

The problem is that through requests for freedom of information, these may be documents that can be received which are not normally provided in the normal course of fact-finding processes in litigation. In short, it could become not only a fishing expedition but extended discoveries if the parties are involved in litigation.

Those are just experiences I've been asked to convey to this committee.

In summary, these are the recommendations submitted to this committee:

First, with respect to the issue of costs, it is submitted that the province perhaps provide additional funding to the municipalities to offset the cost of administering the act. Provincially provided funding is seen as a more desirable response to the cost of implementing the act than raising the fees which are currently provided for by the regulations set out in the act, which could result in an obstacle to those parties seeking information from the local institution.

Second, with respect to the adversarial nature of the process, it is submitted that the commissioner continue to attempt to resolve appeals in the informal manner he carries out right now; however, it takes more active mediation between the applicant and the local institution, thereby ending up in a resolution at that level rather than necessarily going off to an appeal. It is submitted that if the appeal were more direct between the parties, the nature of the process would be less adversarial, perhaps resulting in greater confidence in any decision reached.

Finally, with respect to the language of the legislation, it is submitted that much of the discretionary or subjective language of the act should be tempered by providing



more complete guidelines about the criteria upon which exemptions are to be based. Furthermore, it is submitted that the act should be revised to eliminate the difficulties in arriving at what would be seen as a reasonable interpretation or application of the act by those who are administering it, namely, the local officials.

In conclusion, it has been the experience of our clients, or the municipalities, that the act has been successful. In fact, it does carry on most of the policies that were in place prior to the implementation of the act, that is, a free flow of information. However, it is hoped that those recommendations put forward will be considered by this committee.

**Mr Tilson:** As to the issue of funding, I don't think this particular government has any funding, so I think you can forget about that one. It does raise the question that costs for the municipalities and school boards you represent and other municipalities across this province are obviously climbing and climbing and climbing, for different reasons. There are more and more applications, and more and more frivolous applications; there are people simply out to drive the municipality and the school board under with these goofy applications, and there are some goofy applications.

A question I have asked on two occasions, and I'd like to ask it of you, has to do with costs. There doesn't seem to be anything in either piece of legislation that provides the commissioner the discretion to award costs. When I've asked this question before, I gave the example of a municipal board hearing: In the past it was very rare to have costs awarded, but now they're starting to award costs, particularly where it's quite obvious that someone is being cute in their appeals. Costs are being awarded, substantial costs.

Would it be appropriate for municipalities, when someone is making application after application after application, to make a query to the commissioner about whether these claims are frivolous and whether costs should be awarded by the commissioner? Is that an appropriate role for the commissioner?

**Mr Ewart:** I submit it is. In fact, your analogy to the Ontario Municipal Board has actually been my experience. It's only now that the OMB is prepared to award costs, particularly in those situations where extreme costs have been incurred by the parties and it's resulted in perhaps a loss of competition. These are the large store war applications.

1200

With respect to the act itself, there are indeed no provisions for what we would consider an award of costs for applications which are nothing more than disruptive, and they can be recognized as disruptive because they come continuously and under the act you do have to deal with each one. Perhaps there should be some ability in the act to bring a motion to the commissioner prior to dealing with the request itself, that is to say, some time within the 30-day period from when the request is first received, to have a commissioner determine whether this is indeed a bona fide application or some sort of disruptive attempt by a member of the public to drive up the costs, as you indicate, of the municipality.

I think it is indeed appropriate. It would result in perhaps only those applications which are in good faith going forward, as well as acting as a deterrent to those who see this as an avenue to generate extreme costs on the part of the local municipalities.

**Mr Tilson:** On the topic of mediation, I've had complaints that mediation currently consists of someone calling up and telling the applicant, "You shouldn't be making the application." In other words, the criticism is that the mediation process as it now stands is a joke. Can you comment on that?

**Mr Ewart:** It's been our experience that mediation has to date been very unsuccessful. Perhaps the parties should be somehow brought together rather than dealing with one party on one hand and dealing with the other party on the other hand and saying: "This is what he says. This is what you say. What are you going to do about it?" Using that position, the parties can become entrenched, and it has not resulted in very successful mediation.

On the downside for the municipalities, an appeal to the commissioner's office is not present in the act. Currently, it's a judicial review. There's nothing clearly set out in the legislation for that type of application. It's not only the possibility of an appeal falling down because of the way the matter's been mediated, but there's no further provision for an appeal of the commissioner's office other than judicial review, which is a very costly experience for the municipalities.

**Mr Wiseman:** What we're hearing from groups and other people such as yourselves is fees and making it more difficult for people to make freedom of information requests, to get information. I'd like to come at it from a different point of view. What could we recommend in this legislation or in other ways that would make the information more accessible, so that people could come in and do their own research and look through the documents?

The perception I'm getting is that municipalities in particular don't want their constituents to know what's going on and therefore they're asking for these fees to make it more difficult, while on the other hand the community activists are saying: "What have they got to hide? Why are they doing this? All over the paper in one of my ridings are meetings being held in a restaurant, with people having dinners bought for them and so on.

So there's this perception out there. How do we make it easier for people to get information without having all this extra cost to the municipality?

**Mr Ewart:** One of the solutions is to provide perhaps clearer guidelines in the act itself about the exemptions or the exceptions: Make it clearer to those at the local level what has to be released and what shouldn't be released. For instance, a number of exemptions or exceptions set out in the act seem to contradict themselves as they go on in the act itself.

The concern the municipalities we represent have is that they'll release something which will offend some third party, and the point is that most municipalities are dealing with third-party information. If they could have



clearer guidelines about what has to be released and what shouldn't be released, I think that would lead to a greater ability or a greater desire on the part of the municipality to not get into this appeal, because an appeal at any level is costly to the townships. I think the townships and the municipalities wish to disclose the information. I don't see it as something they're trying to hide. It's the concern that they're going to offend some third party out there by releasing the information. If there were more protection for the municipalities by making very clear in the act what the exemptions are, with suitable guidelines, I think you'd see more openness.

Quite candidly, right now many municipalities await the order of the commissioner's office to take comfort that the order's been made and they're not going to run afoul of any third party or other person. They're almost inviting the appeal by saying, "We will not release this until we're ordered to do so," and that just defeats the purpose of the act altogether.

**Mr Mike Cooper (Kitchener-Wilmot):** Thank you for your presentation. Right at the end you mention providing more detailed guidelines. That came up during the review of provincial freedom of information, and it wasn't in the recommendations there. Hopefully, it will be put in there this time.

We've had people from the law enforcement network and from the Metropolitan Toronto Police Force. They were saying that if there's an ongoing case or it's before the courts, people shouldn't have access. When you're talking about requests when something's involved in litigation, are you talking about an exemption there, that if it's before the courts or if there's a hearing coming up it shouldn't be available?

**Mr Ewart:** No. Specifically, in that situation is a request for documents which clearly fall under, say, solicitor-client privilege. Yet we've had experiences where, despite the discovery process having been conducted, the applicant still comes forward with a FOI request for documents which, worded in such a manner, are protected by solicitor-client. That is the answer given to the requester, who nevertheless ends up in an appeal because the applicant, for whatever reason, is persistent in trying to use the procedure in fact-finding.

The documents we're concerned about are those which are rightly protected by solicitor-client privilege, yet they still take a run at the local municipalities and attempt to get that information through the head, who may not be aware of the type of document. Oftentimes, the head responsible for making the decision on the documents is not party to the action as such—they are not the ones who were discovered, for instance, in the examinations for discovery—or may be aware of the litigation, and they'll take it upon themselves to reply to the request. That's our concern.

**Mr Carman McClelland (Brampton North):** You mention a number of points with respect to the adversarial process. How many people are in the jurisdiction you're counsel for, ballpark figures?

**Mr Ewart:** About 129,000 for the county of Peterborough; Victoria county perhaps 60,000.

**Mr McClelland:** So 185,000 to 200,000 at the outside. How many requests a year come in to you? Do you know that offhand? And how many result in an appeal?

**Mr Ewart:** I can't offhand. Perhaps Mr Kaegi can comment on the township of Belmont and Methuen's experience.

**Mr Stephen Kaegi:** In 1993, we had 12 applications and two went for appeal.

**Mr McClelland:** I'm just trying to get a feel for the percentage that goes to appeal. Maybe you haven't turned your mind to this, but I'm wondering if you have considered the mechanism of dealing with appeals. I throw out just for consideration the federal model, where the privacy aspect of the act and the freedom of information of the act rest with two individuals who work essentially cooperatively but have that dynamic tension within the office that oft-times results in a resolution of the matter almost as a pre-emptory mechanism before you go into a formal appeal. Have you turned your minds to that? Do you see that as a possibility? We haven't really discussed it yet. I'm just wondering, from your experience, if you'd see that as a possibility that might work, and conversely, because I think there are some downsides.

**Mr Ewart:** If some sort of procedure were in place, I could deal with the appeal before it gets, for lack of better term, full-blown. In terms of replying to the request for information, disclosing the information, dealing with the commissioner's office, if something could be set up between them, active mediation between the parties, something like the federal model might indeed be the solution.

Most municipalities we represent say they do not want to go to appeal and certainly cannot afford to go to an appeal. "We will do what we can, but we want to avoid any further costs in complying with these requests. We will do what we can. If we have to disclose, we will, but it's in those grey areas, when we say, 'We will not disclose,' yet will take them to appeal." That's when the costs arise.

**Mr McClelland:** Thank you very much. Mr Chair, can we ask representatives of the commissioner's office, not particularly at this point in time, if they've done any review of that and would be prepared to submit a brief opinion with respect to the issue of splitting the two functions within the office. I'd be interested in hearing their views, perhaps in written form sometime down the road. I just want to put that on the record.

**The Chair:** Fine. Thank you for your presentation today. Safe trip home.

*The committee recessed from 1210 to 1337.*

PATIENTS' RIGHTS ASSOCIATION

**The Chair:** We'll resume the hearing on the Municipal Freedom of Information and Protection of Privacy Act. This afternoon I'd like to welcome to the standing committee on the Legislative Assembly Mr Harry Beatty. He's vice-president of the Patients' Rights Association. Mr Beatty, you may begin.

**Mr Harry Beatty:** Thank you, Mr Chair. For those of you who aren't familiar with the Patients' Rights Associ-



ation, we've attached a brochure at the back of our brief. The association is essentially a voluntary advocacy group that has existed for about 20 years, primarily through the individual efforts of Anne Coy for much of that time, who worked 60- and 70-hour weeks as a volunteer in order to see that there was an association. However, about a year ago we were able to open an office and hire an executive director for the first time.

The first part of the brief is just a summary of some of the consumer concerns relating to health records. There is still a reluctance on the part of many health care institutions and professionals to disclose health records to consumers at all, despite the Supreme Court of Canada decision that I will refer to in a minute. There still seems to be a kind of paternalism in some cases, and in other cases a sort of fear that the person may be going to use the record to launch a complaint or even legal action.

There are also difficulties, even where the person can see the record, in getting copies and difficulties in obtaining corrections of inaccuracies in health records. Once the information is in the file, as you're probably aware, health records and health information are used for a wide variety of purposes: decisions about eligibility for insurance benefits, decisions about employment and so on. Inaccurate information in a health record is something that people would often like corrected.

To turn to third-party access, the people who contact the association, members of the public, over the years have been concerned about unauthorized sharing of information among health care providers, about unauthorized sharing with employers, and sometimes unauthorized sharing with other family members. The whole area of both first- and third-party access to health information of course is extremely complex.

In 1979-80, we had the Krever commission in Ontario. The commissioner was Mr Justice Horace Krever, now of the Ontario Court of Appeal. The Patients' Rights Association, as a public interest group, had standing before the Krever commission and participated fairly actively in questioning some of the witnesses as well as presenting a comprehensive brief.

In the end, Mr Justice Krever released a very comprehensive report of some three volumes and 170 recommendations, including the right of health care consumers to access and receive copies of health records; establishment of an office of health commissioner to deal with a limited number of cases where there was a legitimate reason to restrict access and also to deal with unauthorized third-party access; that there be comprehensive health information legislation; and specifically that consumers have the right to request that information be corrected.

Since the Krever commission, we have had what we describe as sporadic efforts by the Ministry of Health to look at this issue. There have been a couple of discussion papers and indications that legislation would be dealt with. We haven't gone back over the whole history, but the bottom line is that no comprehensive health information bill has been introduced.

An important development was amendments to the Mental Health Act. The Mental Health Act does have fairly detailed provision dealing with first- and third-party

access to health records, which has led to what many consumers, and I believe many professionals, would agree is an anomalous situation where you have a statute, you have laws dealing with these issues, in a psychiatric facility but not in other settings.

In my experience it's not unusual to find public hospitals, doctors and so on using the Mental Health Act forms where they don't really apply just because there's no alternative available. If someone wants to authorize disclosure of a record, they'll get a form 14 under the Mental Health Act even where the person isn't a psychiatric patient, just because they don't know what other kind of form to use; or they may develop their own.

The brief doesn't mention the Public Hospitals Act. It does have some regulations dealing with records, but nothing like a complete scheme. Again, as I'll explain when I come to the Supreme Court case, even what is there under the Public Hospitals Act is not really consistent with the law as enunciated by the Supreme Court.

Of course, we have FIPPA and MFIPPA in Ontario, but they do not cover public hospitals or other health care institutions or professions. They do cover some health care information that happens to be held by government and agencies that are covered, but they don't cover health care facilities and professionals per se.

This has led to what we perceive as a gap, not only with respect to individual health records but also with regard to other documents that may be held by public hospitals which spend a lot of public money but which still are not covered by freedom of information legislation—decisions, for example, to close a particular service in a hospital, things of that nature.

People in the community, especially if they were affected, might want access to information about those decisions, but there is generally no duty to make that information available. The PRA is aware of it. It did participate in the initiative to reform the Public Hospitals Act, but the status of that isn't really clear to us at the present time.

The McInerney case is another recent development. In 1992 the Supreme Court of Canada dealt with consumers' rights to access their health care records and essentially came down quite strongly on the side of permitting first-party access by the consumer, subject to the right of the facility or institution or professional to charge a reasonable fee if a record was requested, and subject also to an exception where there is significant likelihood of a substantial adverse effect on the health of the patient or some significant risk of harm to a third party. I believe the court did emphasize that had to be a genuine risk and there could not be a policy to deny access upon a general basis because of some speculative risk.

The Patients' Rights Association, as I've explained, is largely a volunteer group throughout its whole history, although we've had a paid executive director for the last year. Two volunteers, Brenda Fowler and Stephanie Hall—unfortunately at the last minute Ms Hall was not able to be with us—did a survey of Toronto area hospitals and health institutions with respect to their consumer access policies.



Thirty-two of these institutions responded, but some said they were in the process of developing a policy and did not currently have one. Of those who had policies the major conclusion Ms Fowler and Ms Hall reached is that they were just all different.

Some said you had to contact your individual physician, others had a contact in the health records department, others somewhere in the administration; some promised to provide the reports within a certain time; others didn't. There is a whole range of fees, in some cases quite high. Sometimes there's a provision to record a correction; sometimes there was no reference to that. Also, in terms of the general attitude or orientation of the policy, some seemed to be very discouraging, while others seemed to recognize more that consumers did have a right of access.

We come to the conclusion on page 6 that our first preference, of course, would be to have a comprehensive health information act in Ontario; in other words, to implement what Mr Justice Krever recommended almost 15 years ago. The alternative, which we understand this committee to be considering, or others at least to have recommended, would be to bring public hospitals and perhaps other health care facilities under MFIPPA.

### 1350

We have not reviewed MFIPPA or FIPPA in detail but, in talking informally to people familiar with this legislation, there do appear to be some issues that should be addressed with respect to health records and perhaps more generally.

Just as one illustration, for unauthorized third-party access, it appears that the powers or remedies available under this legislation are either to just make recommendations, in effect, or beyond that to prosecute someone. But if you had a situation where a health care provider did release information without authorization, usually what the individual wants is not necessarily a prosecution but that some steps be taken in order to try and control the damage that was done, like the power to order that records be returned and that sort of thing. Maybe even financial compensation could be considered.

In our experience, prosecutors are quite reluctant to haul health professionals and health institution staff into provincial court and to prosecute, even when the law says that's a possibility. I don't know for sure, but I'm not aware of any prosecutions under the Mental Health Act, for example, for unauthorized disclosure.

That's the substance of our submission and I'd be happy to entertain any questions.

**Mr Drummond White (Durham Centre):** Mr Beatty, I was very interested in your presentation. You go over a number of important issues. Of course, as you know, what we're dealing with here is FIPPA and MFIPPA. Under FIPPA, the provincial legislation, as it relates to provincial institutions, there is presently access to records that psychiatric patients in particular have under the Mental Health Act. That access is not as general or as easily obtained with community general hospitals as it is with the provincial institutions even though there are people suffering from some of the same ailments.

Here we have a situation where the argument against access is that that information could be harmful to the individual. That's been put forward to us on a number of occasions. Yet when we had the patients' rights advocate coming before us, he said there has never been a situation where individuals have gained access to information and it has been harmful to them.

Perhaps there are some situations where information about one's health conditions, one's infections, operations, whatever, might be harmful, but what do you think are the reasons that institutions have been so leery about providing information now that we know that the most vulnerable people in our community aren't harmed by it? Why would someone with a broken leg be harmed by knowledge about his or her treatment?

**Mr Beatty:** I should make it clear, first of all, that the board of the Patients' Rights Association, in looking at this at the time of our submission to Krever all those years ago, now does not take the position that there should be no exception. We basically accept what the Supreme Court said and what Krever said, that there may be some limited situations where the individual would be harmed.

At the same time, many people of course are suspicious that if information is withheld from them, the real reason they're not being given access is that something has gone wrong and the institution or provider does not want them to find out. There are other individuals who would just like more information for the sake of having it, and I don't think that raises any of these issues.

We think in some cases that people may find out, for example, they have a terminal illness. Some of these examples that are raised, it really does reflect a well-intentioned paternalism, where the physician is trying to—taking a physician as an example, in a sense protect the patient from harm, protect him or her from the bad news. Of course, the risks I think you could see in the case that's in the news now, where, according to the allegations in the Pittman case, the physician, having taken that attitude, did not disclose the fact of AIDS to his patient, who subsequently affected the wife, who is suing.

The court will deal with that case, but we feel generally that competent adults should be allowed that information if they want to know. It's the person's choice. An individual may say, "I don't want that information," but we feel if someone wants to know, "Exactly what is wrong with me, how sick am I, what steps can I take to correct that?" he should be entitled to that.

**Mr Tilson:** I'm just trying to—

**Mr White:** Can I have a half-question?

**Mr Tilson:** If you'd stop interrupting me. The question with respect to penalties—and I'm looking specifically at page 6 of your comments, about what happens to people who violate privacy laws—are you telling us that the provincial act, the municipal act, I guess the health legislation, that those pieces of legislation simply aren't tough enough or aren't specific enough with respect to those people who violate the legislation and release confidential information of a private nature?



**Mr Beatty:** I don't think the intention was to say so much that it wasn't tough enough as that it isn't flexible enough, that prosecuting the individual who did it doesn't sort of address the harm, it doesn't really always help the individual. Things that would be more beneficial to the individual, that would assist the person whose rights had been violated, should at least be examined as options. We've just identified this as an issue and not worked out any detailed proposal.

**Mr Tilson:** So you have no problem with the penalty section? The only one I have in front of me is the municipal act.

**Mr Beatty:** Section 48, you mean?

**Mr Tilson:** Yes. You don't have any problem with those types of sections?

**Mr Beatty:** No, there's no real problem but I think, to be realistic, especially in areas like health information where you're dealing with professionals, quite frankly a crown attorney is going to be reluctant to haul the administrator of the local hospital or a physician into the provincial court and prosecute. Also it really isn't an appropriate remedy, I don't think.

**The Chair:** Mr White, we have until 2 o'clock, so judge accordingly the timing of your question and what type of response.

**Mr White:** You would be generally in favour of extending the right to access personal information to include a public institution such as a publicly funded hospital?

**Mr Beatty:** Yes.

**Mr White:** For both medical and psychiatric patients?

**Mr Beatty:** For psychiatric patients, I understand that would be covered by the Mental Health Act now if they actually are in as pursuant to that act, yes.

**The Chair:** Okay, thank you, Mr Beatty.

1400

#### TOWNSHIP OF MARIPOSA

**The Chair:** The next person to make a presentation is from the township of Mariposa, Mr Stan McCormack. Come forward, please. I'd like to welcome you to the standing committee on the Legislative Assembly. We have a half-hour, until 2:30. In that period of time, as you can see, the members are very eager to ask questions. So if you can, with your brief, just leave some time at the end for members to ask questions on your presentation. It's up to you. You may begin.

**Mr Stan McCormack:** Thank you very much, Mr Chairman and members of the committee. It's a pleasure to be here, and I can see we have a fine example of democracy at work.

My presentation is not a long presentation. I'm not going to bore you with a whole lot of statistics and legal jargon. I come from the township of Mariposa. Incidentally, the locals—and I'm not sure which I am; I guess I'm a local now—they say "Maripawsa." The longer you've been there, it's more like "Maripawsi." Of course, when I first went there it was "Mariposa," I thought, but I soon was corrected.

I'm on township council there. It's a township with

6,700 people. You can appreciate, then, that the operation in the township office is a very limited one. The citizens, though, generally I think are very active politically, if we're going to call municipal politics a political theme, and there is a good deal of information generated by a local taxpayers' coalition. That's really the basis for the difficulty, if there is a difficulty, with this legislation.

What we've experienced is one individual—I believe that his situation is bordering on harassment; I've talked to him about it. He makes many, many requests which put council to a great deal of work. I'm going to explain those to you.

Specifically, I'm only making two proposals, and they appear on the first page of the presentation. The first one is that minutes made on a document should not create a new record except that any minutes made on the original document shall be available, following normal access procedures. Let me explain that.

The way we operate now, as I've set out on the first page, is that any records or any material which the clerk gives to us, of course she maintains the master copy, and that's kept in the office. We believe that any citizen should be able to walk off the street and have access to that document. That in fact is how it happens. I've stated that in here. We do that actually for efficiency as much as anything, because we neither have the staff nor the time to respond to a great many memoranda. We just find it's in the best interests to give everyone easy access. So it's not a matter of access.

When the clerk copies a document and distributes it to members of council, then hopefully councillors take that home, and in their preparation—and certainly I'm most guilty, and that's why I'm here; I formulate thoughts on the various things in order to debate them at the next council meeting, and I write minutes on the memoranda or on the letters or on whatever material.

What's happening is that this requester then sends in an omnibus request and he asks for all of the material which each councillor has in his or her home. The reason that he asks for it—it's different than the original, he claims—is because he wants to see our minutes.

As I understand the law now and as our solicitor has confirmed for us, those minutes, in law, as the law is written, are accessible to the requester. You can imagine that we're not councillors like in a city; we're councillors where our filing system is maintained by us. Sometimes the filing system is throwing it in a drawer. I happen to have a filing cabinet, but when we have to go through and search for material, it takes a great deal of time.

The situation has been exacerbated in that when we endeavour to charge—and this is really just an add-on—for that time, then the—should I use the term?—bleeding hearts in Toronto turn down our request to allow any cost. We think that, incidentally, was inappropriate.

What I'm saying to you is under this act, those minutes placed on those memoranda, on that correspondence, in the privacy of our home become a matter of record and we are forced in our own time to search for them. The municipality has to pay for the copying. We think it's a nuisance. We think the individual gains nothing from it,

although we're not talking about one individual, we're talking about all councils, obviously. We think it should be dispensed with. We believe the legislation should be amended to remove that requirement.

Just so you know that I'm not being overly harsh or overly restrictive here, we further believe, as my point explains, that if that discussion and debate that we have results in a new memorandum, of course, or if it results in a minute being appended to the original document, then we expect that any individual shall have the right to the original document, but not the various minutes that each councillor puts on his working material.

Just by extension—I've given this some thought, actually while lying on the beach the last couple of weeks in Nassau—what about the thoughts that you have when you're shaving in the mirror, as each of us does? The women don't shave, so we have to include them—equal opportunity. What about the thoughts they have while applying their makeup? I see them as being similar. I think it's only a matter of time, given our technical competence and the things we can do, when we will be required to share those thoughts with individuals. I know that's a bit of an extreme, but it's something to think about. That's the first point.

The second point is that provision for a hearing—that's where we meet face to face—be added to the legislation, where either party does not accept the order. "Order" probably should have been in quotation marks. In other words, you're probably all familiar with this process. There's a mediation process and, incidentally, the mediators do a pretty good job. If you can come to a conclusion, then the matter's resolved. However, if you cannot come to a conclusion, each party is given the opportunity to make a submission and an inquiry officer reviews all the material and comes to a decision.

In our limited experience, because we've been able to resolve most of them, we've found the conclusion which that individual arrives at is unsatisfactory. Quite often, despite the best efforts of the writer in the township and the individual, I'm sure, reading it, something is lost through the written word. So what we're proposing is that either originally—and there's a difference here—or if one party or the other does not accept that order, then there should be an appeal.

We're into a quasi-judicial process here. In the tribunals which I've been familiar with, certainly it's a reasonable and normal practice that the individuals, the adversaries, if you will, meet face to face. Just as following this presentation you're going to ask me some questions, I suggest and I firmly believe that there's a better dialogue as a result of that.

I've pointed out to you that in the facts there, there's not much material in support of this, that when we tried to appeal the decision, we were told quite bluntly by the commissioner that there is no right of appeal and we should get in touch with our lawyer. We did. We contacted our lawyer. He didn't like it any better than we did.

But I think, rather than go to the courts—and it looks like it's extremely unlikely that the court's going to interfere in this process, and I understand that and I

rather like it—I know it's additional cost, or it may be, but I'm saying, as I said in the opening, that it is our position that natural justice is not well served, given the inadequacies of the written word coupled with different interpretations given to the same set of facts.

1410

I don't think this is sour grapes in that the decision didn't go our way. I think that right should be given to either party, whether it's the requester or whether it's the body from whom the information has been requested.

I have given you one variation of that. I think you have to give some thought to this, whether you put an automatic right of appeal in or whether there's some review by the commissioner, but it seems to me that it's overly harsh to deny the right of an appeal of an order coming from someone, effectively a public servant I guess, to supply information at some considerable cost to the individual in this situation—nothing to do with the municipality. So I'd like to see that.

That really concludes my presentation. I repeat, I think generally we've been able to satisfy most of the needs in our township. We have a completely open-door policy. I should point out that this particular requester, although it's maybe not in general terms, doesn't even bother, quite often, to come and pick up the information after he gets it, and yet we've talked to our lawyers about how to deal with that.

So in this presentation I say, now what is the cause of that? What's wrong here? To me, they would be the two things that are most likely to correct what I see are the ills. Thank you.

**Mr Morin:** I have a street in my riding called Mariposa. Where is the township of Mariposa?

**Mr McCormack:** It's in Victoria county, by Lindsay, and I live actually in Little Britain. Mariposa is to the west of Lindsay; formerly Dennis Drainville's riding, now of course vacant.

**Mr Cooper:** Who?

**Mr Morin:** I'm intrigued by the two points that you make about the minutes. If I understand you clearly, it is that you're given a photocopy of the original correspondence. You go home, you write your notes on the minutes or on the correspondence, and then the individual is now requesting that you provide him with those notes that you put on the side of the minutes. Is that correct?

**Mr McCormack:** That's exactly correct. He of course had the minutes, and he also gets the original document.

**Mr Morin:** Do you bring those notes back to the council when you debate the issue after that?

**Mr McCormack:** You see, by law he can't see them until after that particular council meeting, but the answer is yes. In other words, I receive it from the clerk on Friday night, I go home and I do my homework and prepare for council. During that preparation, I record some of my thoughts or the points I want to make on the document, and it's just a copy of the document. So then when he reads the minutes, or if he's at the meeting, he says, "Oh, I'd like to see what Stan's"—or any other member's—"thoughts were in doing this." So then he makes a request formally to have all the councillors go



through and search and supply it. Reams and reams of paper.

**Mr Morin:** Right. But do you use those minutes, those notes that you've made? You bring them in.

**Mr McCormack:** Oh, yes.

**Mr Morin:** You use them for debates. In other words, the official record indicates what you've debated, but they don't refer to the notes that you've made.

**Mr McCormack:** No.

**Mr Morin:** Except the ones that you express verbally.

**Mr McCormack:** That's correct, and even much of that is not recorded. But that's correct. As I put it, if you took the minutes of all the councillors, then the decision is an amalgam of those minutes and anything else that we added. Really, he just wants to see how any individual councillor is thinking, I guess, and I don't know what he does with it.

**Mr Morin:** That's a very interesting point, and I would like to hear what the researcher would have to say on that. Is this an official document? Does it become an official document? You didn't follow?

**Ms Swift:** No, I did follow the discussion; unfortunately, I haven't turned my mind to that issue at all. But I could, and report back to you on other experiences and precedents in that regard.

I understand there has been a ruling by the commissioner that in fact it does become a new document and therefore he has a right in law. We accept that he has a right in law, the way it's written, sir, and of course that's why I'm here, to ask you people to consider reviewing that.

**Mr Tilson:** I find your story remarkable. I write comments on people's presentations, and I can assure you that no one, including Mr Sterling, is going to see them. In fact my view is that minutes don't become minutes until they've been adopted and approved by resolution of council.

I'd like to see the legal letter of opinion that tells you that notes or a document that a councillor has in his or her possession are in fact a public document. What you have in your file is your business.

**Mr McCormack:** Hear, hear.

**Mr Tilson:** Anything else is absolute nonsense. In fact it leads to the thing that neither you nor I are probably able—maybe I should speak for myself—that I'm certainly not capable of speaking on.

I know there's a debate with respect to notes that doctors make, handwritten notes that doctors make in a file. It may be slanderous; it may not be slanderous; it may be revealing; it may be information to assist him or her with respect to preparing a report. I don't know where the state of the law is on that one but I don't think that those notes are available. But if this is the law, then none of us will ever write anything down. We'll be winking it for ever.

**Mr McCormack:** That's exactly what has happened. I still write down as much but the others have ceased.

**Mr Tilson:** I think that since the delegation has come to us, somewhere along the line research should provide

us with an opinion. If Mr McCormack is correct, then we should take a long look to remedying it. Do we have the right, Mr Chair, to ask for a legal opinion on this? Do we have that resource?

**Mr Cooper:** If I may, Mr Chair, I was involved when we did the provincial review of the freedom of information and this issue came up. It was stated that even in our case our files in our offices are public documents. If we're going to make any notes, put them on sticky pads and they can be taken off and they don't become part of the document, but anything that's written on the document—if you check the debate during the provincial review you'll find it in there.

**Mr Tilson:** I'm not interested in debate; I'm interested in what a legal opinion says.

**Mr Cooper:** We had an opinion at that time, I believe.

**Mr Tilson:** Did you?

**The Chair:** Maybe a copy of that legal opinion again to clarify.

**Ms Swift:** I can go back and check the records for the hearings on that. If there was one provided, I can bring that out. If there isn't one, I could prepare one for you.

**The Chair:** Are you satisfied, Mr Tilson, on that?

**Mr Sterling:** I haven't been. Isn't the material difference that an MPP and his or her records are not subject to the Freedom of Information and Protection of Privacy Act, whereas that same kind of freedom is not given to municipal councillors or trustees? I think that's the significant difference here in terms of what we're talking about, and therefore your records are subject to the act and ours aren't. I think there's a very big difference, and whether or not you should be given the kind of confidential nature that we have for our files is a real question.

**Mr McCormack:** Just so you understand, Mr Sterling, I'm not asking that our records all be confidential. What I'm saying is that of course if it's a memorandum X, the individual will always be able to get the original at the clerk's office. But what's happening is the minutes, and I refer to a minute—it could be two words or it could be maybe seven or eight. I just scribble on the paper to assist me in my thought process. That's really the issue and that's what's going on. We've been told that's required. Our solicitor called into Toronto—I don't think he has it in writing—and confirmed that. I find that offensive.

**Mr Sterling:** But the significant difference is that once I write something on a minute, that becomes my record. I don't have to divulge that, as I understand it, in the existing law. I think the commissioner could quite easily point—I think what the witness is stating is correct, that he doesn't have that same kind of immunity, so to speak, as MPPs do.

I think if you're a parliamentary assistant or you're acting as a parliamentary assistant and you write a note on a particular thing, then it is subject to the freedom of information and privacy act.

**The Chair:** Okay, fine. We'll get an opinion on that.

**Mr Hayes:** Yes, I'd certainly like to get a clarification on that also because I don't know if I'm hearing you correctly or not. You're talking that as a councillor you get correspondence and the municipal councils get them a few days ahead of time, you're doing your homework and you might be just putting down some potential questions that you might want to ask, and things of that nature, and this is that kind of thing.

**Mr McCormack:** That's correct, yes.

**Mr Hayes:** I would like a clarification on that also.

One thing I would like to ask you is in your municipality—and I know this is a concern across the province; various people have raised the issue of closed council meetings—actually, if you have many closed meetings and what the purpose would be.

**Mr McCormack:** No, we really don't have a closed council meeting per se. We would rise in committee of the whole for some very limited issues, such as when we have a lawsuit ongoing and each time we discuss that, then of course we only record any decisions when we come out of the committee. But no, we do not have closed sessions and we don't contemplate them.

**Mr Hayes:** There's been a lot of discussion about how much information, especially when we were talking about social assistance in the last couple of days—how much access do you feel that elected officials, and councillors in particular, should have to private information?

**Mr McCormack:** I'm not deathly against the freedom of information. Where I think we appear to have fallen down is on the privacy, because if you complete the title of the act, there's also the protection of privacy. I don't know if there's a distinction or if there is a line.

Originally, I saw the minutes which I make in the privacy of my own home as things peculiar, if you will, and private to me. The act isn't written that way apparently. I understand that, I accept that, that's what the act means, but I think it should be changed. The danger of course is, how do you write it so that you don't go the other way and we become then a society that overly restricts information? I think in a municipality, generally, most things should be available to all the people, and of course the lawsuit is an exception and certain things, communication with your solicitor.

**Mr Hayes:** Do you think that a councillor, for example, should have a list of names of people who are on social assistance?

**Mr McCormack:** I've never turned my mind to that because I'm not on county council and, as you probably are aware, the township is not involved in that.

**Mr Hayes:** There are some municipalities that are.

**Mr McCormack:** Yes. I'd want to think about that a little.

**Mr Hayes:** In your opinion, what would you call a frivolous or vexatious request?

**Mr McCormack:** I think that's exactly what's happening here, that this has become a frivolous and vexatious request, but I didn't want to overemphasize that

today because it seems to me that's a problem we have, unless in your wisdom you came to the conclusion that these very things in the act might correct that. It seems to me that going after minutes that an individual writes is a little far-fetched. I believe frivolous is probably an appropriate word.

I suppose that if we wanted to go after our lawyer, and it's still an option, we perhaps could take some countercharge against this individual, but I'm not sure we should be doing that. We've taken the position that the information is there for them but when we say information we mean the information the clerk retains. Indeed I believe that he overstepped the bounds in this case.

**Mr Hayes:** I'm a little confused. This person you're talking about, is that another councillor or is that an individual?

**Mr McCormack:** No, no, no. He's an individual who writes a little sort of semi-monthly—no, bi-monthly one-page, two-page information circular that he sends around to people who will contribute \$10. He's a member of the taxpayers' coalition.

Hey, I get along with the gentleman okay. He's not all bad. In fact, I've told him: "Why do you go to all this trouble? Why don't you just ask us?" But he does everything this way.

**The Chair:** Mr McCormack, I'd like to thank you for coming before the committee today.

I've asked that the subcommittee members just meet with the clerk here on some changes on an ad that's to go in the paper. We'll take a five-minute recess.

*The committee recessed from 1425 to 1430.*

ELIZABETH CARRUTHERS

**The Chair:** I'd like to welcome Ms Elizabeth Carruthers to the committee. We have half an hour, and in that half-hour if you can leave some time at the end of your brief for members of the committee here to ask questions on your presentation. You may begin.

**Mrs Elizabeth Carruthers:** Thank you, Mr Hansen, and good afternoon. I'm taking medication which has affected my voice. Apparently we're okay if I stay close to the mike. If I slip away from it, please let me know.

I'm here as an individual, though what I've come to discuss affects quite a lot of people. I'm here as the result of a very bad hospital experience which was made far worse by the way the hospital handled the complaint. In the process I learned that Ontario hospitals lack accountability either to the patient or to the government. I'd like to propose that public hospitals be defined as institutions under the freedom of information act.

You already know one good reason for this, that hospitals are publicly funded, costing Ontario taxpayers \$7 billion a year. As a precedent, you may know that the British Columbia freedom of information act now covers the BC hospitals as well as the BC College of Physicians and Surgeons. I'd like to give you additional reasons connected with patient care and sometimes patient safety.

I'll start by distinguishing between hospitals and the doctors who practise there. Then I'll describe the limited accountability of hospitals under present Ontario law. I'll



show what that lack of accountability can lead to, through personal experience, and how placing hospitals under the act will prevent that from happening to other people. Finally, I'll consider some arguments that have been advanced against this step.

First, hospitals and hospital doctors: The Public Hospitals Act regulates hospitals, not doctors, and the responsibilities of the two are very different. Doctors are usually not employees of the hospital and hospitals are not legally responsible for doctors' mistakes. Hospital doctors are independent contractors who have been given the privilege of using hospital facilities to treat their patients. The hospital is responsible only for ensuring that a doctor to whom it grants privileges is competent.

To balance this, the doctors are self-regulated by the College of Physicians and Surgeons. The college sets standards of behaviour for doctors in matters which are not covered by law. A dissatisfied patient can complain of his doctor to the college. Hospitals, however, are not self-regulated. No entity equivalent to the College of Physicians sets standards for patient care in hospitals, and there is no one to whom the patient can appeal when something administrative goes wrong.

Under the Public Hospitals Act, each hospital is an independent corporation with a board of directors, a staff and a corporate culture. The act specifies the structure of the corporation but says very little about how patients are to be treated. On matters on which the act is silent, what happens to the patient depends on the corporate culture of the hospital.

This leads to inconsistency in a crucial matter: the accuracy of medical records. The Public Hospitals Act doesn't even require the hospital to let the patient see his medical records. It doesn't require the hospital to correct errors or even to respond to a complaint.

Let me tell you what this can mean, using an actual case. According to my own physician, I have a metabolic problem, so my body doesn't use food normally. In the winter of 1990-91 my weight was down to 67 pounds and falling. I've since been told that if something hadn't reversed that trend, I had only weeks or a few months to live. I was admitted to the Toronto Hospital for six to eight weeks of nutritional support, called TPN. I didn't get the treatment. I spent a month in hospital getting only token treatment for a week of that time and then I was discharged. No follow-up was provided, nor was home treatment or any of the support services intended for someone who has only a few months left.

That's not how it's supposed to happen, but the hospital was not responsible for that, the doctor was. The hospital was responsible for the rest of what happened.

I later learned the treatment plan was changed the day after admission by a doctor who was not the attending physician and whose connection with my case I can't learn, nor could I find out why the plan was changed. Several months later, the attending physician stated on the chart summary that I have anorexia nervosa and implied this was the reason.

This is not only a misdiagnosis, but medically it's a contradiction in terms. Thanks to media coverage of

anorexia, the public knows that anorexics want to be thin. The last thing they do is go to hospital for medical help to gain weight. But apparently, if they do go for medical help to the Toronto Hospital, they're denied the treatment which would be given to a non-anorexic at the same dangerously low weight. If a misdiagnosis of anorexia means a life-sustaining treatment is withheld, then it's a dangerous misdiagnosis.

The only reason I'm still here is that a physician not connected with the hospital started treating me with anabolic steroids. My own physicians tell me that these can't be used indefinitely. I am going to need hospital treatment again and it's extremely important to get the record corrected. They also tell me I can't avoid the problem by just going to another hospital because treatment is based on previous records, so I tried to get the record corrected. The attending physician did not answer my letters, so I wrote to the hospital's CEO. I wrote many times and provided full documentation, part of which I've left with you with this rather large package of material.

Now here we are speaking of the responsibilities of the hospital when a complaint is made concerning the records. The Public Hospitals Act states that the medical records are the property of the hospital and not of the doctor. Other legislation states that a hospital may correct errors in its medical records, and that's what I was asking for.

Correcting a medical record should be a matter of evidence, like correcting a credit record. Medical records determine treatment which can be a matter of life and death. They determine insurability, disability benefits, employability. Also, technology can now combine unrelated databases. For example, records of child support payments can be combined with records of drivers' licences to force fathers to make payments. Medical information or misinformation can be combined with anything at all, affecting any area of life, yet a person cannot correct errors which can affect him in so many ways.

#### 1440

To sum up so far, a patient's complaint is investigated by the administration of the hospital, and errors in medical records can be corrected by administration. They don't have to correct them, but legally they can if they choose. These topics are not addressed by the Public Hospitals Act. Therefore, each hospital can choose how it handles them.

Here's how the Toronto Hospital handled mine. The misdiagnosis is a contradiction in terms. That should have alerted the hospital at once, but the hospital refused to address it. It steadfastly refused to answer my questions of why my treatment plan was changed, repeatedly did not address my requests for a correction despite the evidence I supplied, and finally told me in writing to go to another hospital if I didn't like care like that. I later learned it allowed the very doctor I complained of to conduct its investigation. I know of that through a letter written by the CEO himself. This letter and some of the documentation I supplied to the hospital form part of the material that I've provided here.



I'm sure you'll agree that this is no way to treat a sick person, but there's no law against it. As evidence of that, I've also provided a report from the legislative research service, prepared by my MPP, which confirms that Ontario law at present does not give the patient a right of correction or even a right of access to his medical records. Hospitals, which are funded by public money, are not accountable for something as basic as accurate medical records, either to the government which funds them or to the patient, who is the taxpayer who provides the funds.

Placing hospitals under the freedom of information act would change that. It would give an appeal outside the hospital, which my experience shows is badly needed. This idea has come up before, as of course you know. I'd like to review some of the arguments previously advanced against it.

One is that providing for an appeal would be inconsistent with the special relationship of trust between doctor and patient. I suggest to you that by the time the patient has requested his chart, found a serious error, asked for a correction and been refused, and then wishes to appeal, there is very little special trust left in that particular doctor-patient relationship.

Another is that some of the patient's privacy will be lost through investigation by an outside agency, and that's true. It's also true if the patient decides to go to law. The patient in a hospital is also a member of the public most of the time and is the "reasonable person" in law. It's up to that reasonable person to decide for himself or herself whether what he'll gain by correcting the medical record is worth the loss of privacy. This is not something a paternalistic hospital should decide for him.

Another objection is the medical mystique. A layman cannot possibly determine whether a doctor has made an error. Most errors would not be appealed. They result in disaster for the patient, and the disaster corrects the record. In those cases which are appealed to the commissioner, his first step under the act is to appoint a mediator. The mediator can get answers to questions the hospital refuses to answer for the patient: Why was the treatment plan changed? What connection did this doctor have with the case? Bringing out key information before an impartial questioner will usually make things very plain indeed.

For those few cases which have to be resolved by an inquiry by the commissioner, he can obtain any necessary medical advice. The act already covers diverse entities. Medical entities which are already institutions include the Hospital Appeal Board, the review board under the Mental Health Act, the Nursing Homes Review Board, the Criminal Injuries Compensation Board and the Coroners' Council. Non-medical entities include the Ontario Provincial Police Grievance Board, the Wolf Damage Assessment Board and many others.

If a commissioner can get specialized knowledge about police grievances, criminal injuries and wolves, he can get specialized knowledge about hospital complaints.

Finally, there's the objection of cost: the cost to the hospitals of setting up a system to provide information

and the cost to government of extra staff to handle appeals.

The cost to hospitals could be overcome through an interim measure. At first, grant access and appeal only with regard to the medical records; not, say, to the minutes of the damage control meetings the hospital held on the complaint. But require the hospital to give the mediator any information he asks for relevant to the complaint. Later, access to other information could be phased in.

The cost to government: As noted above, most medical errors are corrected through the tragic consequences to the patient and would not be appealed. If the hospitals claim that an appeals mechanism would result in a flood of complaints, they're acknowledging that we need such a mechanism very badly indeed.

In fact, what would happen if the public hospitals were placed under the act would be that suddenly the hospitals would have their own internal mediators and suddenly patients' complaints would be taken seriously. There would be a real effort to resolve them in house. No one wants their dirty linen washed in public, it would be washed in private, but the result would be clean linen and better care for patients.

It would be better care in more ways than just attention to complaints. As things are now, we see that a doctor can put down a misdiagnosis which is medically absurd, a contradiction in terms, secure in the knowledge that hospital administration will support it and he will never have to give reasons.

Let there be some way to appeal, to require reasons to be given, and suddenly hospital administration will be annoyed with doctors who embarrass them. Those doctors who might have been overcasual in diagnosis will take greater care to ensure the diagnosis is supported by the chart. A matter of simple justice in hospitals, enabling a patient to correct errors on his medical record, will filter through the system to prevent a lot of those errors from being made in the first place.

Thank you very much. I'll be happy to answer any questions you may have.

**Mr Tilson:** Thank you. Your testimony is certainly useful, because the committee is discussing the very issue as to whether or not the legislation should be extended to hospitals and other health institutions. It is most useful. So that I understand what your position is, are you telling me that you found out certain information by a fluke or by some doctor telling you certain facts and that the hospital will not change the record?

**Mrs Carruthers:** That's right.

**Mr Tilson:** Are you telling me that a doctor who, once finding out, admitting by his or her own observations that a record is incorrect, cannot change the record?

**Mrs Carruthers:** He or she can change it. In this case the doctor didn't reply to any of my letters, so I then addressed myself to the CEO of the hospital.

1450

**Mr Tilson:** Can you retain another doctor to help you with your plight?



**Mrs Carruthers:** I can retain as many doctors as I like, but there's now misinformation on my hospital record which my own doctors, who are doing their best outside the hospital, tell me is very likely to interfere the next time I need hospital treatment.

**Mr Tilson:** I understand that, but just so I understand what your problem is, are you telling me that if you went to any doctor, whether a member of that particular hospital or not, who was able to determine, by whatever means, that there is an error in your record, he or she cannot approach the hospital to have that record corrected?

**Mrs Carruthers:** I don't really know what another doctor could do. Actually, your point does bring up that there was a further development with another doctor after I got sent away which I think relates to what you're saying.

**Mr Tilson:** You got sent away? What do you mean?

**Mrs Carruthers:** Part of the material I sent you is a letter which I wrote to a Ms Leslie of the hospital on January 3, 1993, I believe. Ms Leslie was the vice-president to whom Dr Hudson, the CEO, delegated the handling of my complaint, so I was writing to her. I included as part of that letter a written diagnosis from my own doctor, as part of a great deal of material I had provided to them.

I received letters from Dr Hudson, the president of the hospital, and also from the chairman of the board of directors, pointing out that one of the benefits of our system in Ontario is that the patient has freedom of choice and urging me to exercise my freedom of choice to find another hospital where I might obtain medical care.

**Mr Tilson:** I understand that.

**Mr Paul Wessenger (Simcoe Centre):** Thank you very much for your presentation, Ms Carruthers. I gather you're quite familiar with the provisions under the Mental Health Act with respect to access to records in psychiatric hospitals. Would it be fair to say that you would be supportive of having the same type of right of access to records in the hospitals, with the same exceptions, that is under the Mental Health Act?

**Mrs Carruthers:** Yes, I would, but I would point out that what's under the Mental Health Act is not a right to correction, although it's called that in a marginal note. It's only a right to ask for a correction and, failing that, for the patient to attach his own version of events. Now, that could be further amended by an extract from the freedom of information act permitting an appeal to the commissioner. In that case, that would serve the same purpose.

**Mr Wessenger:** Might I just ask you if you have suggestions of how the process might work with respect to correcting a record? The reason I ask that is, obviously there might be cases where it's clear that the record is absolutely incorrect, but in other instances it might be a situation where you have a professional difference of opinion with respect to a diagnosis.

I know this happens in many cases in the medical community, where different professionals will give a

different diagnosis. In that situation of a different diagnosis—I just throw this out to you—it would appear that there should be in the records the information. There are different diagnoses with respect to a health matter, but I don't see how you could correct something when there is a professional difference of opinion with respect to, for instance, a diagnosis matter.

**Mrs Carruthers:** This ties in with what Mr Tilson was saying, actually, about another doctor's opinion. After the hospital sent me away, I took counsel with my friends, one of whom is a retired clergyman working part-time as chaplain in another hospital. Through the hospital chaplaincy route, he got me in touch with a Dr McIlroy of the hospital administration.

I had been told by my friends that if I failed to get a correction, I would do well to ask, as a second best, that they put a letter from my own doctor on the record. I had failed in the first—the hospital said no and sent me away—so I asked Dr McIlroy whether I could have this done and he said, "Sure, why not?"

He took the material that my doctor had sent in earlier and told me he'd put it on the record. Well, full marks to Dr McIlroy, but that means that was a possibility that was always available. It's not a correction but it is something. The culture at the Toronto Hospital was such that they led me this dance for two, three years, it is now, when there was at least a partial solution always available.

**Mr Wessenger:** And it took that time to get even that partial solution in your instance.

**Mrs Carruthers:** And that was by the back door because I happen to have a friend who's a retired clergyman and a hospital chaplain.

**Mr Wessenger:** You have no way of ascertaining whether in fact that information is on file, other than being advised that it is because you have no access to those records. Is that correct?

**Mrs Carruthers:** That is also correct, yes.

**Mr Wessenger:** Would your first preference be comprehensive health legislation dealing with this matter, or do you feel it's such an important matter that the time delay would warrant dealing with the matter under this legislation to bring some rights with respect to patient access?

**Mrs Carruthers:** I'm very glad you brought that up, sir. I do have a suggestion. It would take only a regulation made by cabinet to identify the hospitals as institutions under the act.

I realize that what you're doing is the beginning of an orderly process that will result in a coordinated revision of a piece of legislation. But, as I understand it, that takes a few years, and in a few years people can die through inappropriate treatment based on incorrect medical information. If I may venture to put the thought before you, if this committee were to suggest to cabinet that it make a single regulation on this subject without waiting for the full review of the act, cabinet just might listen.

**Mr Wessenger:** Thank you. I appreciate your very positive suggestions.

**Mr Morin:** Mrs Carruthers, I thought that your

presentation was very compelling and very clear. I detect some real negligence on the part of your doctor in failing to correct the records. Could you have gone to the College of Physicians and Surgeons, where they have the power to investigate a case?

**Mrs Carruthers:** I did go to them, sir. Their complaints committee decided not to review to discipline. I appealed that decision to the Health Disciplines Board, which has a backlog of 300 cases, they tell me, representing two years.

**Mr Morin:** Did you go to the Ombudsman after that? The Ombudsman does have jurisdiction over those bodies.

**Mrs Carruthers:** Not over the hospitals.

**Mr Morin:** None over the College of Physicians and Surgeons, but over the—what was the other board that you consulted?

**Mrs Carruthers:** The Health Disciplines Board.

**Mr Morin:** Yes, I believe that the Ombudsman has jurisdiction over those boards too but you never followed that procedure.

**Ms Carruthers:** You're quite correct. The Ombudsman can review a decision of the Health Disciplines Board, but I have to get to the Health Disciplines Board first.

**Mr Morin:** I see. Okay.

**Mrs Carruthers:** I have been in touch with the Ombudsman to see whether there was anything they could do, and they did review the situation and they say it's not their jurisdiction.

**Mr Elston:** I'm interested in the issue of records themselves. In your case you've been able to separate your record in the hospital from those records that are in the charge of your physician. In your case it would probably work if you could have those hospital records corrected. What would you say to being able to access your own physician's records if they form part of the records of your stay in hospital? Would that be necessary in some cases as well?

**Mrs Carruthers:** I'm sure it would be, and it's my understanding that the Supreme Court of Canada decision, *McInerney v MacDonald*—correct me if I'm wrong; I'm an engineer, not a lawyer—the Supreme Court decision which allows access to doctors and the hospital records becomes the law of the land, that even though Ontario law gives no access, perhaps this does.

1500

**Mr Elston:** The judicial record sets the test for access obviously, and we just haven't codified it. My question is then, would you say any part of the hospital record which is perhaps kept separately by the physician in his or her own office should be made part of the record and be made available?

**Mrs Carruthers:** I don't know that much about it, sir. The exemption I was thinking is based on Ontario Hospital Association objections in the past, where apparently it has in-house meetings to discuss certain cases. There are minutes to these meetings and I'm suggesting as a way to get this going quickly, not to

require them to develop systems to make minutes of meetings available, but make strictly medical records available, because those could be done at once.

**The Chair:** Mrs Carruthers, I'd like to thank you for your presentation before this committee today.

ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

**The Chair:** The next group to come forward is from the Ontario Public School Boards' Association. Welcome. I have only three names down here and I notice there are four of you so please identify yourselves and your position.

**Ms Helena Nielsen:** If you want to do it that way. I thought I'd be introducing them, but if you'd like them to introduce themselves, that's fine.

**Mr Guy Giorno:** I'm Guy Giorno from Hicks, Morley, Hamilton, Stewart, Storie, legal counsel to the Ontario Public School Boards' Association in this matter.

**Ms Nielsen:** My name is Helena Nielsen. I'm a trustee with the Scarborough board and in the position of vice-president with the OPSBA organization.

**Mr Peter Gnish:** I'm Peter Gnish. I'm with the Halton Board of Education and I act as the freedom of information coordinator with that board.

**Ms Gail Anderson:** I'm Gail Anderson. I'm associate executive director for the Ontario Public School Boards' Association. I'm pleased to be here.

**The Chair:** Okay, we have half an hour. In that half an hour if you can give your presentation and leave some time for the members to ask questions on your presentation. You may begin.

**Ms Nielsen:** Thank you very much, sir. First of all, we are all pleased to be here this afternoon and for the opportunity to make a presentation to the standing committee. We thank you so very much. The Ontario Public School Boards' Association represents over 90 public boards in the province of Ontario. That's 1.2 million elementary and secondary students and more than 500,000 adult learners. All these boards we represent are pleased to have this opportunity.

OPSBA reaffirms its support for the principles of the Municipal Freedom of Information and Protection of Privacy Act. Make no mistake, local government information should be made available to the public and the privacy of individuals should be protected with respect to personal information about themselves held by local government. In discussions regarding the act, it is notable that all the school board trustees and officials interviewed prefaced their remarks with support for those principles.

In preparing this submission, OPSBA has held discussions with school board staff members who most regularly handle information access requests under the act. It is particularly important that those experienced with the application of the act comment during this review since it provides firsthand knowledge and a resource for the recommendations for workable changes.

It will be Mr Gnish predominantly who will be giving you some practical experiences with respect to operating within the legislation.

Our submission presents one general issue with the act.



The act's perspective is narrow, but its coverage is broad. It is OPSBA's belief that, while the purpose for which the act was written—to provide open access to government information and protect the privacy of individuals—is good and is supported by OPSBA, the act's limitation is its application of those same principles in a homogeneous and mechanical way.

In reviewing our recommendations we encourage the committee members to keep the following three general observations in mind:

(1) The school boards and other municipal institutions operate differently than the provincial bureaucracy.

(2) School boards, and again other municipal institutions, lack the resources that perhaps are available to the provincial bureaucracy.

(3) School boards handle information in a variety of circumstances and for a variety of reasons, eg, as educators, employers etc. Different considerations may apply to each circumstance.

In our submission, we've highlighted six problems and I'd like to highlight the five main ones to you, and perhaps Mr Gnish can elaborate further in terms of some examples.

The first three problems have to do with the costs. The first is the cost and its application because of its complexity. Also, we have a concern with respect to costs because of the exemptions to the user-pay principle. Also, the act is costly because of the voluminous and frivolous requests we certainly have received.

Problem four is that the act's privacy rules are not designed for educators or employers. The fifth main problem is that boards are forced to respond to privacy or compliance investigations for which there is no authority in the act.

To give you some practical examples, perhaps I could turn your attention to Mr Gnish and some comments he would like to make as part of the presentation.

**Mr Gnish:** Just to get started, as a practical practitioner I want to say that I've really been quite delighted with the way the act has worked over the past three years. By and large, it's a good act and I support it. I think we've been able to do a reasonable job in terms of trying to provide the service that we're expected to give under the act to the people who are requesting the information. So I'm not complaining about the act as an individual; I really support it.

However, there are some aspects to it that I think really need to be looked at and some modifications made in order for us to be able to provide more efficient service, not only to the requesters who are actually asking for information under the freedom of information act but also to those other people who ask for documents and records all the time, but don't do it under the freedom of information act. Certainly, if I were to say that I have a preference as to how these records should be requested, I would say that they should be requested outside of the act rather than under the act, because in that way we can save ourselves some time and effort and at the same time provide them with potentially quicker turnaround.

In our board, we've got 43,000 students, 5,000 staff

and a multitude of records, as you can be aware. When I was appointed the freedom of information coordinator, it was an add-on task, it was part of my job, and I think I probably am representative of the kind of situation that occurred in boards across Ontario. Most boards were not able to afford to hire a full-time coordinator, so somebody got saddled with the job, was asked to do the job, whatever. In my case, this was an add-on.

That was fine, because the expectation was that we wouldn't have a large number of requests. I think over the first couple of years we found that the average number of requests by school board was about four or five per year. That makes it very manageable. Unfortunately, our board is one that's had more requests than any other over the past three years. We've had more than 300. As such, it's made the job somewhat more complicated for me in that it's not as if the 300 come all at the same time; they vary. Sometimes you get floods and other times you get none.

As an example, let me just give you two or three. Most recently, just last week as a matter of fact, and I think it's kind of apropos, we had 205 requests from one individual in one day. We're having to deal with that at the moment. Previously, we had 68 requests from one individual in one day, and we had a total of 137 during a three-week period.

**1510**

That makes it very difficult when we are not set up to have a full-time coordinator and other staff to look after these requests. Somehow, we managed to do it. What we do is we hire additional staff and we manage to deal with these requests within the time frame that's allotted. However, it does present us with a problem.

The second problem we have is the size of some of the requests. It appears to us that there are individuals out there who are looking for whatever they can find in the documents, so rather than being fairly specific about the request—the request is specific in the sense that it identifies the records they want, but they try to cover as much territory as possible by making a large request. So we've had a request, for example, for all of the documentation around the expenses that the board has incurred through five individuals for the past five years, including all the supportive documentation. That fee estimate was over \$50,000. We had another request that was in the range of \$12,000. These requests are normally appealed.

I don't have a concern with actually doing the fee estimate. My concern rests with the fact that these requests are large, and if we ever had to implement them, then a certain portion of our staff certainly would be on the job full-time for a large period of time. Recently, an alternative strategy to dealing with some of the requests—we've had one of these requests, not one of these two but a third one, repeated. It was a huge fee estimate and it was repeated by having the time frames broken down. Rather than having the three years all in one request, the same request was made by that person over a two-week period but multiplied by X number of weeks.

That's a deliberate strategy, as far as I'm concerned, in order to avoid the fees and get the two hours of free



time. I have a concern with that and I think somehow the commissioner needs to be able to deal with a request where the process is being circumvented, as far as I'm concerned, to avoid the fee estimate.

Another difficulty that we've had is where the requester doesn't necessarily believe that we don't have certain documents. We've had dozens of these requests. In fact, it was almost a matter of fact that if we said there were no such documents that existed, the requester automatically appealed and we went through the appeal process and eventually went to inquiry in some of the cases. The process by the commissioner has been changed somewhat so that in that particular case now what we have to do is go through an affidavit process, which involves using the lawyer, and there's a cost involved to that for us.

My concern here is not that this is being done, because I think that simplifies the process for us. It's just that there seems to be no responsibility on the part of the requesters to actually prove that they think the document's a request. The responsibility is incumbent on us and therefore we have to incur the costs.

I think probably I'll just leave it at that. That gives you a few examples of the kinds of things that I think we have to deal with on a daily basis which cause us to run into some difficulty and really end up meaning that during certain periods of time it makes it very difficult for us to provide the service to the legitimate requester when we have some of these that tend to be vexatious, if you want to use that particular word.

**Mr Giorno:** Peter Gnish, as a practitioner working for one of the school boards, has identified his experiences from a hands-on level. What I'd like to do, members of the committee, is take you through some of OPSBA's recommendations, because they were drafted with a view to simplifying the act to make it less costly on institutions, yet at the same time meet the twofold purpose that the act was put into place to serve.

My own perspective is that of a lawyer who practises in this area. I've been practising law as long as the act has been in force, and I represent not only school boards but municipalities and other institutions in proceedings before the Information and Privacy Commissioner of both appeals relating to denials of access and existence of records, but also investigations involving the privacy rules of the statute.

OPSBA's recommendations are found at pages 16 and 17 of the brief and it might be helpful for members of the committee to turn to them. While there are a number of recommendations, they fall into simple groups and I thought it might be useful to deal with them in that manner.

The first set of recommendations are those that are designed to simplify the decision-making process. The point that I think is important for members of the committee to understand is that while opening the doors may seem conceptually a simple process, in fact what the act requires is not the simple exercise of opening the doors but a very complicated process of searching, obtaining, classifying, examining, reviewing and drafting fairly complicated decisions based on the legal test in the

statute about what will and what will not be released.

I wasn't able to provide to the clerk, upon our arrival, a copy of this document, but what I have from the Information and Privacy Commissioner is a sample of what a very simple decision letter should look like. Mr Chair, I don't know exactly how I should distribute this.

**The Chair:** The clerk will distribute those.

**Mr Giorno:** What I've handed to Mr Tilson and Mr McClelland is, from the Information and Privacy Commissioner's perspective, a very simply precedent—

*Interjections.*

**Mr Giorno:** Thank you, sir.

**The Chair:** Just continue on.

**Mr Giorno:** This is a sample response, or index prepared by the Information and Privacy Commissioner for the guidance of institutions. It's a sample response to a request which involves three records and triggers two sections of the legislation. It's already one page and it refers to various clauses and subsections. It's detailed. You'll see that institutions are required to examine, not just an entire record but make the decision based on, in this example, each paragraph of a record. It could in some cases be a decision which is a different decision for each sentence of a document, a different decision for each word or name in a document, and you've got to remember that many requests involve not three records but 300. This is a requirement that's imposed on institutions by the statute.

Recommendations 2 and 3, then, are designed in some measure to simplify that. Recommendation 2 is to give consideration to reducing or removing the onerous and complex burden imposed by subsection 4(2) of the act. Subsection 4(2) of the act is the subsection that in effect says that you can't look at one record as an entire package, that you've got to examine each of its constituent elements, each sentence, each paragraph, each line and make a decision on each, if possible.

Recommendation 3 is that the act be amended to state that where a group of documents all contains identical or similar kinds of information, the group may be treated as a single record for purposes of the institution's decision.

Again, many requests involve a number of documents all of which are similar or identical, yet the act requires that a separate decision be made for each. OPSBA suggests that it would be simpler to allow institutions to respond, especially where there's going to be a denial of access for legitimate grounds, to a class of records and deal with them all at once. It would simplify the decision-making process, and I'm sure you'll have heard or will hear during your deliberations from requesters and users who talk about the amount of time it takes to get a decision letter. This will simplify and expedite the process from their point of view.

The most important recommendations fall under the heading of reducing costs for institutions. Commissioner Sidney Linden, the first Information and Privacy Commissioner, recognized that the Legislature, in drafting these statutes, the provincial and municipal freedom of information and protection of privacy statutes, wanted there to be a user-pay principle so that the individual wh



wants the information can obtain it, but at his or her own cost and not at the expense of all the taxpayers collectively. The reality is that the user-pay principle is imperfect and there are loopholes, and OPSBA suggests that some of them be closed.

A major loophole is that which says that while you must pay for access to general information, if you're asking for information about yourself, you get it for free. That may make sense if we're talking about a student's OSR or one or two documents, but when institutions receive requests from people who are involved in litigation with the board, personal information about them held by the board could amount to boxes and boxes. Yet under the wording of the statute, they still get that for free.

1520

OPSBA's recommendation 5 is that subsection 45(2) of the act be deleted. The result of that would be that if you're asking for personal information about yourself, you'll still get two hours' free search time, but if it takes more than that, you'll bear the cost of the search and not the taxpayers generally.

The sixth recommendation is that subsection 45(1) of the act be amended to allow institutions to charge for the time spent reviewing a record, making a decision and preparing a decision letter. I've pointed out to members of the committee how complex the decision-making process itself is, how complex the review process itself is, yet right now those are costs which under the statute must be borne by the taxpayers collectively, because they finance the institution. They're not passed on to the requester.

Recommendation 7 of OPSBA is that the act be amended to make a requester bear the onus of showing that a fee is unreasonable. Mr Gnish alluded to this. Any requester can, and it's a legitimate right, challenge a fee that has been charged, yet the onus of justifying a fee is placed entirely on the institution. The Information and Privacy Commissioner requests affidavit evidence from a member or an employee of the institution who is familiar with the records, the record-keeping processes, who will talk about exactly what was done to come up with the fee estimate. Often this affidavit itself is pages and pages just to justify an estimate.

There are situations in which I've been involved and in fact Mr Gnish has been involved where a fee estimate of \$200 or \$300 is appealed. That is where an institution has legitimate grounds to decide that if it's going to cost the taxpayers a certain amount of money to find a record, \$200 or \$300 of that will be passed on to the requester. In situations where that fee is appealed, it will cost a school board or a municipality more to defend the fee than to give it away for free.

Recommendation 8 is that appeals involving fees of less than \$1,000 be resolved in a summary fashion by telephone conference so that the legal proceeding, the litigation which surrounds fees, is not all out of proportion to the fee itself.

Recommendation 9 is that full costs be paid by the requester for information to be used for commercial purposes. That in fact is a recommendation that this

committee itself made following its review in 1991 of the provincial statute.

Recommendation 10 is that the act be amended to allow an institution to treat as a single request multiple requests from the same individual, whether or not they're received on the same day. Members of the committee will be aware that under the act, a requester gets two hours' free search time for each request.

Mr Gnish alluded in his remarks to a situation where a requester made a request for a large amount of information, expense records relating to a three-year period of time. That person was given a fee estimate and declined to pay it. That person instead responded by saying, "I'm not going to make one request for a three-year period of time, I'm going to make a number of individual requests each for a two-week period of time." The act as worded may suggest that this person gets not two hours' free search time but two hours times 205 requests' free search time, which is in our submission not at all consistent with the intention of the Legislature. The recommendation is that if institutions are allowed to group requests and treat them as one, that will simplify the process.

In outlining some of the recommendations, I've taken more time than I intended. I believe Ms Nielsen has some concluding comments.

**Ms Nielsen:** We apologize if we're going over a little bit. I will be very short.

**The Chair:** It depends on the presenter. If you want to take the full half-hour for your presentation, that's up to you.

**Ms Nielsen:** Ladies and gentlemen, OPSBA does truly appreciate the opportunity to provide our views to members of the standing committee on the Legislative Assembly.

OPSBA believes that the purpose for which the act was created is important and necessary. We however encourage the standing committee and the office of the commissioner to look for ways to improve the mechanisms for the administration of the act so that it may be easily applied by the practitioner, and also to make the process far more cost-effective.

**Mr Cooper:** In recommendation 15, you ask about being exempt from FOI and just having it included under the Education Act. We received something from legislative research this morning that recommended against this. It actually suggests that the children's aid societies be included under MFPPA. I know one of the problems you're facing is that under the Education Act, it talks about 18-year-olds; under freedom of information, it talks about 16-year-olds; under the Young Offenders Act, it talks about 12-year-olds.

I can understand the difficulty you're having, because even the new advocacy legislation may come into effect in this where you're dealing with other things. So bringing all these acts into some sort of uniformity that you can address I realize is a problem. Where would it be better to bring it under the Education Act, rather than just being more expedient for you?

**Mr Giorno:** Thank you for raising that, Mr Cooper. Recommendation 15 is not a recommendation that school

boards be exempt from the freedom of information provisions of the act. It's simply confined to the privacy rules. Those are the ones that govern the collection, use and disclosure of information.

The suggestion that's made, and it's outlined in some detail in the brief and I refer members to that, is that the privacy rules by their very nature are broad. They cover everything that a school board does.

There's an example in the brief. When a student writes an essay, *What I Did On My Summer Vacation*, the teacher who assigned it is collecting personal information. Whether or not members of the committee think that ought to be covered by the legislation is one thing, but I can tell you it is covered by the legislation.

I don't want to take too much time, but I simply refer members to the brief and point out that OPSBA's view is that if there are going to be rules which hit at the heart of all uses, collection, disclosure of personal information, then it is far better that they be contained within legislation which is drafted with an understanding of the particular needs of each institution. In the school boards' case, that's the Education Act.

We talk about information collected by employers and suggest that this be done under employment legislation, and not one general privacy law which applies to many institutions but specific privacy rules which are tailored to the needs of each use.

**Mr Elston:** One question which I have been allocated deals with recommendations 7 and 12. Can you tell me how the person would be able to establish that the fee was unreasonable if they didn't know the information behind the collection; whether or not there should be at least some reply required when somebody refuses a request on the basis that it is vexatious so that at least you can put it to bed or at least finish that record; and finally, what steps ought to be taken in relation to issues of privacy of an individual who perhaps is attending a school from having been in some form of incarceration or under some treatment or problematic activities in another school, for instance?

**Mr Giorno:** I think Mr Gnish has examples of the last point in his own board.

**Mr Gnish:** I think with respect to the last point, there's provision for security of that information, and the information can only be shared with those teachers who are directly involved with that student. If information is requested beyond that source, that would not be shared with anyone else. I don't know whether that gets at what you're talking about.

**Mr Elston:** Is it fairly safe in the classroom if there is concern? For instance, if I'm a parent and I've heard, what happens? What happens if there has been some activity in the classroom or out while people are on recess or whatever that causes me concern? How do I find out about it? How do I make sure about safety in the school, since that is a big issue these days?

**Mr Gnish:** That's not an easy one to answer, particularly if that information isn't public. If it's private, then we're not going to release that kind of information. We're going to have to deal with it ourselves, unless the

police are prepared to tell us that this information can be made public.

**Mr Elston:** Just a couple of quick comments on 7 and 12, then, is fine.

**Mr Giorno:** Dealing with point 7, I take your point Mr Elston, that it may be difficult under some circumstances for a requester to explain why a fee request is unreasonable, although there is provision in the statute and institutions when making fee requests to explain them. They explain the calculations and the methodology; at least they ought to, and that provides some basis for them.

Again, in response to point 12, it would be OPSBA's position that in explaining why a request is deemed vexatious, the decision letter would, again, explain that. It is OPSBA's position that this should be subject to a right of appeal.

1530

**Mr Sterling:** I just want to ask a bit of a question. There seem to be opposing views: on the one hand, Mr Gnish in saying that the act is working fairly well in his practical experience, and then on the other hand, we have legal counsel saying that it's not appropriate for schools and school boards and that kind of thing. I guess the problem legislators arrive at, number one, is to have some kind of law where people will know where to find it, and therefore I reject in some way Mr Giorno's suggestion that we have a separate law for each institution etc.

Given that in my view it would probably be dreaming to expect that we were going to take school boards out of this and put them into another, are there some amendments you can put forward which would take the students' summer vacation paper out of the purview of this legislation, which I don't think it was ever intended to cover?

**Mr Giorno:** Thank you, Mr Sterling. I think that's the point exactly. Right now, and I'll take this collection of personal information as an example, there's only one rule, basically. If you're not a law enforcement agency and you're not collecting information that you're expressly authorized to do by statute, the only rule is found in the act and it says in section 28 that the information's collection must be "necessary to the proper administration of a lawfully authorized activity."

The amendment to the act that could be made in that case—I'd suggest the same for uses and disclosures—would be to provide more detail which would deal, for example, specifically with educational records, educational assignments, would deal specifically with employment documentation, as opposed to having one completely broad rule which proposes to cover every single use or collection of information by any public institution, because the same rule is found in the provincial statute, and leave it to the Information and Privacy Commissioner to put on his education expert hat one day to decide what school boards need to collect to do their jobs and what municipal employers need to collect to do their jobs as employers and what district health councils need to collect to do their jobs.

**The Chair:** Ladies and gentlemen, I'd like to thank



you for your presentation here today.

**Ms Nielsen:** Thank you, and we will follow up on that suggestion. OPSBA will look into that and perhaps we can have something further for you.

#### ONTARIO TEACHERS' FEDERATION

**The Chair:** Would the Ontario Teachers' Federation come forward, please? Welcome. Please introduce yourselves.

**Ms Margaret Wilson:** My name is Margaret Wilson. I'm the secretary-treasurer of the Ontario Teachers' Federation and I'm accompanied today by Mr Jim Head, our president, and by Ms Ruth Baumann of our senior staff.

The federation would like to discuss with the committee today two areas of concern related to the specific activities of the federation itself, as opposed to our members in the school system.

The Ontario Teachers' Federation has been in existence since 1944, which is the year of passage of the Teaching Profession Act. The federation, as a statutory body, has a number of activities that are regulated by the provincial government. Much of our day-to-day business, as opposed to the kinds of things you see us around the House on so regularly, is with school boards. Specifically, by statute, the Ontario Teachers' Federation collects the fees on behalf of all teachers in the publicly funded elementary and secondary schools. Secondly, the federation operates a disciplinary tribunal under a regulation, which determines whether professional misconduct has occurred and, if so, what disciplinary action is appropriate.

I'd like to start by addressing a problem that we've had over the last two or three years with fee collection, and I have provided an example of correspondence from one school board that illustrates the difficulty we're having. I should say that when I talk to school boards they try to be reasonable and they're trying to do the right thing. We're not talking about boards being obstructive on the fee, but the way the fees are structured in OTF, each affiliate has its own fee, and the fees are salary related.

In the latest occurrence in terms of a school board attempting to provide us, not only with the money for the fee but with the information we need in order to verify whether or not the fee was accurate, the school board, as a consequence of inquiries it made related to other issues in the freedom of information act, had decided that it could not pass on salary information. But when a fee is salary based, you need the salary information, by individual, in order to verify whether or not the individual amount and then the total amounts are correct.

We had correspondence with the board, and the board did forward the information. But every year it's a different board. Where somebody asks a question, they get a general answer, and we get the "What if?" I now propose to write to the commissioner to try to get a compliance letter.

I think this is an illustration of one of the things that was not apparent in the act when the act was written; that is, individuals can make inquiries of the commissioner,

but the act wasn't structured to deal with organization to organization. It's not clear in terms of why it overrides other acts. It would be our belief that it never intended to override acts that deal with things such as the statutory power to collect fees. That, when it comes right down to it, is a mechanical and financial problem, and I'm sure we'll find a way around it, although it would be easier if the act were clear in not intending to override those powers.

A more serious and ongoing problem has occurred related to our operation of the relations and discipline committee of the federation. Under a regulation, the federation conducts inquiries and holds hearings in cases of alleged professional misconduct or unethical conduct of its members. The committee also considers applications for reinstatement of the teaching certificates of former members or a request for the lifting of a suspension of a teaching certificate.

The sorts of cases that we deal with range from serious interpersonal disputes between teachers to teachers who have been convicted of criminal offences, including those involving children. The committee considers cases brought by members of the profession, by its member organizations, by members of the general public, including school boards, and by the Ministry of Education.

The relations and discipline committee takes its responsibilities very seriously. Part of the responsibility is to gather evidence of the teacher's misconduct. Generally speaking, the case is forwarded to the committee following a conviction. But the committee operates under the rules of civil procedure and from time to time proceeds without a conviction being in existence. Recently, several school boards have refused to provide evidence to the relations and discipline committee. When we have talked to the school board personnel, the freedom of information act is mentioned.

It's the federation's position that the disciplinary procedures under the Teaching Profession Act are a necessary aspect of public interest and that while the committee, under the Statutory Powers Procedure Act, has the right to subpoena, it can only subpoena witnesses, and that committees such as this committee, which are empowered by law to act, should be able to obtain evidence which is clearly necessary for the committee and the federation to fulfil its mandate without going through the subpoena-of-witnesses process.

#### 1540

It is a fact, however, that school boards are increasingly nervous about even statutory tribunals having access to files. Recently, there was a case in which the federation and the Ministry of Education and Training had to appear together before an Ontario judge—it was Judge Kovacs—arguing that the reasons for judgement, reasons for sentencing and the certificate of conviction from a criminal trial were necessary evidence for the committee to make a determination about a recommendation regarding an individual's teaching certificate. The federation and the ministry were successful in pleading before the judge, but we had to go and plead before the judge in order to get the release of the information. In this case, a minor was involved and the release of the information



was conditional on the minor's name not being revealed, which we would have done in any case under our procedures.

It's the federation's position that disclosure to its relations and discipline committee of such evidence as may be required for a member of the profession to have a full and complete hearing before the committee should be permitted under section 32(e), and that a clear reference should be made in the Municipal Freedom of Information and Protection of Privacy Act to the requirements of professional disciplinary bodies for information relevant to their deliberations.

When any act contains within it provisions which override or take precedence over other legislation, there's need for a reasonable adjustment mechanism to sort out and anticipate the difficulties. In addition to the specific problems cited above, the education community was extremely concerned after the original passage of the act that the ability of schools and their obligation under the Education Act to communicate to the parents of 16- and 17-year-olds was seriously compromised.

At that time, the Ministry of Education was unable to provide any useful clarification. Despite the fact that only individuals were supposed to be able to make inquiries under the act, the school trustees and the teachers of the province wrote and asked for clarification of the issue of informing the parents of 16- and 17-year-olds when their children were truant.

We've attached the letter and the reply for your information, but it's a useful example of the kind of tortuous thing you can get into when you get an override act. It's not clear exactly how it applies to all the other acts, and of course we were really grateful when the Ministry of Education couldn't shed any light on it.

I'd be happy to take questions.

**Mr Elston:** I'm interested in the clarification for the purposes of safety of individuals, sort of to the extent that I started to ask the question of the last group. If I'm teaching in one classroom, for instance, I am able to find out if one of my students is participating in temporary absence programs or he is at a home. But if I am the teacher in the next classroom, also responsible for my students in many ways—at least I think most feel they are—I'm unable to be advised of that, technically. Have you sat around—I know you have. Can you tell us what conversations you've had about trying to get some reasonable way of managing that as an issue?

**Ms Margaret Wilson:** I'll start and Jim may, as a vice-principal on leave in a Scarborough school, want to address the issue as well.

That's a serious issue for teachers. It's an ongoing issue for teachers. Essentially, the kind of motions we get, the kind of requests we get, from teachers consistently say that all teachers, all school employees—because caretakers sometimes need to know as well—who have a need to know about the background of a particular pupil should have access to that information and that their professionalism should be respected. They're not going to go clackety-clack out on the streets. But if we take some students who are assigned to school as part of their

rehabilitation, very often they're not in a stable emotional condition and people other than the classroom teacher are going to have to cope with them from time to time in the halls and in the cafeteria as they move between classes.

Our strong preference would be for any school employees who are likely to have contact with the student having access to the information, with clear discretion to the student's rights. We don't want to be punitive, but we have had serious incidents.

**Mr Jim Head:** I just say that, certainly at the level of administration, that access should be there so it could be distributed with some sort of professional ethic and some discretion. I give you a simple example of just how far some of this is going. At my school last year we wanted to do a video yearbook and we were advised that we would have to get permission for every photo taken in that video, otherwise we might be in violation of freedom of information, and that, as I think you can appreciate, is almost impossible when there are background people and everything else involved, so it became a very interesting thing. I think the school did the right thing and tried to get those permissions out, but also realized that they'd have to take a certain risk and go ahead and do some of that. It's gone that far and there are a lot of people very jumpy.

**Ms Ruth Baumann:** I think there are two separate issues here. One is the question of the restrictions, for instance, placed by the Young Offenders Act on the communication of information of children and young people who have had encounters with the law and have been convicted. That's one area.

We discovered the other area when we were looking at the 16- and 17-year-old issue, after the Municipal Freedom of Information and Protection of Privacy Act came in. We started out looking at it from the standpoint of, what do we do with 16- and 17-year-olds who are truant and can we call home? We ended up in a position where we found ourselves discussing cases where there was intimidation activity, or extortion activity going on in a school and the child who was a victim did not want the parents to be told because of cultural issues in the particular community.

What happened when things reached the state in a school where the people responsible in the school believed that the child was at serious risk if they did not alert the parents to what was happening and what the circumstances were? That's one of the issues referred to in the letter, in the appendix that went to the freedom of information and privacy branch, trying to get clarification on the relationship between the Education Act and this legislation.

There are many shades. There are some things where there are clear prohibitions in the case of the federal legislation. There are other cases where the rights granted in the FIPPA legislation to 16-year-olds create a whole different set of problems potentially for schools and which I think we need to have ways of dealing with right across that range.

**Mr Elston:** The second question, if I might, relates actually to your issue about divulging salaries to yourselves for purposes of fees. You may be aware—or you



may not, but you should be aware—that the minister started his remarks by saying that he was advised he should look into making public, or he should examine the question of making public, salaries of those people paid by taxes. The commissioner has basically recommended that as well and I wonder if you might comment on that from the standpoint of the federation.

**Ms Margaret Wilson:** I'm laughing because I can remember a time where—

**Mr Elston:** That would certainly deal with your issue.

**Ms Margaret Wilson:** Yes, it would deal with my issue. I'm remembering a time when OSSTF, the federation to which I originally belonged, used to publish a book in which there were everybody's salaries and there was always somebody who left it on a desk in a school and then the rest of the staff would be furious.

That's an interesting question, as to whether or not public servants have any right to individual privacy. I would have thought that, except for the very top echelons, those who are the equivalent of CEOs, there should be a right to individual privacy. I think the public has a right to know salary ranges and they can make a reasonable stab at it. If we're paid from the public purse, I don't see why the ranges shouldn't be public.

**Mr Sterling:** I was going to ask the same question in that the second recommendation of Mr Wright, who appeared in front of this committee, was that all salaries of all people paid by taxpayers be made public, I guess from the standpoint or the view that the taxpayer has a right to know what every individual is receiving from them.

**Ms Margaret Wilson:** It's going to make for interesting neighbourly arguments.

**Mr Sterling:** I guess so. I guess, as legislators, we've been under that scrutiny for a long period of time and it's part of everyday life.

**Mr White:** It showed at least how poorly we're paid.

**Mr Sterling:** Well, I guess so.

**Mr Wiseman:** That is public knowledge.

1550

**Mr Sterling:** The amendment that you recommend under 32(e), "for the purpose of complying," is to allow information from the board to flow to the disciplinary board. The amendment on page 4 of your brief says, "for the purpose of complying with an act of the Legislature or an act of Parliament, an agreement or arrangement under such an act or a treaty." What do you mean by "agreement or arrangement"?

**Ms Baumann:** That's what's in the act. That's exactly the language from the act.

**Mr Sterling:** Okay. I'm sorry.

**Ms Margaret Wilson:** What we're suggesting is that there should be a reference in the Municipal Freedom of Information and Protection of Privacy Act that cross-references to that section of the act and that deals with the right of disciplinary bodies.

We're specific about professional disciplinary bodies because they're all regulated by the province, so there would be some guarantee of the appropriateness of the

body to which the information is going.

**Mr Wiseman:** I'd like to go down a different road. You made a comment, and if I'm paraphrasing you correctly, you said nervousness about giving out information with reference to the boards.

It seems to me that the boards are not the only government institutions that are becoming increasingly nervous about giving out information. What's happening in response to that as a rebound effect is that the public and community activists and people are becoming more and more cynical about this lack of information flow. We just heard from the previous group about vexatious requests and I think that the difficulty of getting information is leading to that. I'm just wondering if you might want to comment on what you perceive as being the reasons behind this nervousness and whether or not there's anything that we should be doing—I've asked this question of others—in changing the act, making it clear about what information should be confidential and what information shouldn't. Have you got any thoughts on that?

**Ms Margaret Wilson:** I think your problem is that no list is ever going to be all-inclusive and any list lends itself to being interpreted in a very restrictive manner. That's why we specifically made the suggestion that you identify professional disciplinary bodies as bodies that had the right to information for their specific disciplinary purposes. We think that if you go that route, then you're not making lists.

Some of the information which we've been refused you would probably think of as picayune. We've had four school boards refuse us copies of the board motion which terminated teachers. These were people who were fired because of criminal convictions and we couldn't get the official record that they'd been fired. That's the extreme degree to which people are taking their obligation to protect information under this act, if you want to know how the public feels about not knowing. That, to me, is at the extreme end of refusing information.

**Mr Wiseman:** I have one like that. I have a complaint on my desk right now about a refusal for the release of information that to me seems like it should be public domain.

**Ms Margaret Wilson:** To me, a number of bodies have become almost paranoid. It's like Jim's school being told that they needed releases to make a video. What's happened to the world if you need releases to make a video yearbook? There's something peculiar.

**Mr Wiseman:** I wish you hadn't brought that up, because we had a videotape of the public school where my kids are and I don't know if they got releases.

**Ms Margaret Wilson:** Somehow or other we have to be able to deal with an act such as this so that it does what it should do but doesn't chill everything in terms of information which should be going out to the public.

**Mr Wiseman:** But how do you put that kind of common sense into an act? That's really what I'm asking.

**Ms Baumann:** That's our adjustment process.

**Ms Margaret Wilson:** You gradually make adjustments. Unfortunately, the adjustment process itself is

bureaucratic. We don't have a bright idea for you for an adjustment mechanism but we think this act needs one that makes it easier for people to go and where you get a better record of what's permissible and what isn't, that's then communicated across the broad community so that people know what the real restrictions are supposed to be.

**Ms Baumann:** The act itself talks about an appeal to the commissioner where someone has refused information or where someone is proposing to provide information. The presumption is that it's an individual who appeals to the commissioner.

From our perspective, when we looked at the various issues that affected us, we wrote the letter to the branch about the Education Act issue and we did get an answer that we found quite satisfactory and quite useful. But we think some kind of more accessible and less bureaucratic access to that kind of advice, as Margaret said, in a way that would keep a running record so there would be a body of what was said in a similar case, so that there's a body of knowledge that gets built up that the people who then in turn administer the law locally begin to incorporate in their knowledge, would be useful.

**Mr Hope:** It's interesting, the comment that was made about what's happening to our society. I guess as we look at the economic situations and what's going on socially in our communities, this is what's provoking a lot more inquiries, which then leads me to what Mr Sterling had brought out earlier about the information we are providing to the community. Are we providing it well enough, or is it informational enough so that the general public maybe gets away from the frivolous requests that are being put forward?

We are getting a more knowledgeable community now, a more knowledgeable irate taxpayer now, and they are demanding more information, which is supposedly general public information. I'm just saying that we always look at trying to put the clear guidelines: What is public information and public domain and what is not public domain? I'm just saying there can't be all that much that is so confidential. Most of it, I believe, is more public, and the public has the right to know.

It was just your comments. Really, I wasn't going to ask anything until you said, "What's happening to our society?" I keep asking that question too: What is happening to our society today?

**Ms Margaret Wilson:** It's angry.

**The Chair:** Thank you for your presentation.

MARION THOMAS

**The Chair:** The next presenter is Marion Thomas. Welcome.

**Ms Marion Thomas:** Good afternoon. I'm pleased to be here. Freedom of information is something I've had a lot of experience with, or frustration with.

I have entitled my brief to you Shields and Barriers. I believe municipalities and governments in general use the freedom of information act as a shield; we see it as a barrier. That's just the way we perceive it, and I'd like to just recount some of our experiences.

In March 1989, while commuting home from work, a

radio station announced that a landfill site would be located adjacent to the community of Whitevale, where I reside. This isn't the present search I'm referring to. This is a search from the previous government. Our quest for information from the municipality of Metropolitan Toronto was a direct result of this announcement.

1600

After the shock subsided or the dust settled—whatever you want to call it—it was important to us to determine by whom and how this area had been selected. When we asked the consultants, they told us that the region of Durham selected the site. When we asked the region, we were told the province of Ontario selected the site. Obviously, somebody wasn't being truthful.

A substantial period of time passed before we finally realized that it was actually Metro Toronto that had commenced a search in the region of Durham and they'd been exploring it for some time. The search eventually resulted in the public release of a short list of sites, but the long list of 25 sites still remains an enigma. We've spent over a year trying to get this information and we're still at a standstill.

Our original request of September 21, 1992, requested a report dated February 9, 1988. On October 28, we received a four-page document dated July 1989—that's more than a full year later—and it was illegible. We couldn't read it. I brought it because it's just so bizarre. It was such a poor copy and it was reduced to such an extent that it's impossible to read even with a magnifying glass. We complained about it and got a new copy that was substantially larger though still very difficult to read, and we could now read the date of July 1989. Obviously, a report dated more than a year later is not what we were looking for.

Ironically, Metro admit to the existence of the list in their submission to the Information and Privacy Commissioner when they state:

"...in a previous waste site selection process undertaken in 1988, the institution refused to assure individuals offering their property of confidentiality throughout the selection process. Ultimately, the short list of sites identified during that process was released for public comment. However, the long list of sites remains confidential to this day."

We have commenced this process again, using new information obtained at the Metro Toronto Reference Library and referring in more detail to the report that we want, but Metro is still denying the existence of this list. Obviously it exists, so you can understand our frustration.

Concurrent to this search for an interim site, Metro had also directed their consultants to search for a long-term solution. After a period of more than one year, we were successful in obtaining this report. It wasn't easy. Metro opposed the release of information at every step. They were successfully able to use sections of the act as a shield to prolong the eventual release of information or, as in my first example, give irrelevant information. We didn't get what we wanted anyway.

On our part, we were faced with a decision to either retain legal advice to argue our case or become textbook



lawyers to prepare our appeal. It was a time-consuming project to respond to Metro's defence. They have all their lawyers and everything at their fingertips.

During the last two years, I've made over 50 requests for information, largely to provincial ministries and authorities, with regard to the waste management initiatives that are going on. The results are far less than desired. Initially this was quite successful, but it deteriorated badly during the latter part of 1993. Perhaps this was because of the volume of material I sought.

I have encountered many barriers to obtaining information, such as the town of Pickering using their lawyer to hire the consultants and invoking lawyer-client privilege, or charging exorbitant amounts for the search and photocopying. I presently have estimates totalling over \$5,000 for information I have requested. I must either prove that this is an issue of health and safety or show that I'm unable to pay in order to avoid these fees.

In the case of municipalities not revealing which information has been removed when they give you the files to look at and advising which sections of the act were used to justify the decision, on my part, two can play at this game. I'm acutely aware that requests for freedom of information are time-consuming for the recipient. My frustration with the process just created a knee-jerk reaction that every time I received something really ridiculous in the mail, I responded by sending out three or four requests for more information.

I have some suggestions. I probably have many more; I started preparing this this morning. I could come up with a few more if I had another week.

The time line for responding to requests must be improved. I've never received a response prior to the 30-day interval imposed by the act.

Number 2, reasonable time lines for response from the Information and Privacy Commissioner with regard to the appeal process must be established. Our defence had to be prepared and submitted within 30 days, yet it took a further nine months to reach a decision.

Establish reasonable fees. Recognize that the average citizens who are requesting the information just don't have \$5,000 to fork over for information that they require to be on a level playing field with the consultants and their experts.

Improve the act so municipalities cannot use it as a shield to hide behind. If you can accomplish the aforementioned, impose a \$5 processing fee to reduce frivolous requests. The federal government uses this. I spend significantly more time preparing my requests. Thank you.

**Mr Sterling:** Thank you very much for coming to the committee. You're representing a different viewpoint, because we've had a lot of municipalities come forward and talk about frivolous costs and the high costs of producing information.

I assume that you're acting in concert with other individuals in your quest to get information.

**Ms Thomas:** That's correct.

**Mr Sterling:** What strikes me is that you're the very

kind of individual for whom the freedom of information act I think was created, in other words, for citizens who are being attacked by government, or their property rights and their rights to live in a community are being attacked.

I don't know whether a \$5 application fee would deter the frivolous use. What I'm trying to do is that if you were acting on your own and you were not dealing with something which was as important as the waste disposal sites, there would be a real concern on my part, as a taxpayer, to pay a \$5,000 bill for it. I'm not concerned, as a taxpayer, if in fact you're acting in concert with a number of other individuals and there is a real concern in your community. I think that the issue—not trying to be partisan—has been botched badly by two successive governments in terms of dealing with this issue.

**Mr Wiseman:** Three.

**Mr Sterling:** Well, three; I don't care how many. Is there any suggestion you might have, for instance, when a request is cosponsored by a number of citizens, or something of that nature? I think that if a group is really seeking the information, to me that indicates a larger part of the community than one individual who may be acting on his or her own. Have you ever thought of something akin to that?

**Ms Thomas:** I understand what you're saying. I've sent these requests in on behalf of the Whitevale and District Residents' Association, not the town of Pickering or PACT or anybody else of that nature. There are 200 individuals who actually live in Whitevale. The information we seek is the raw data that was used to produce the information books the IWA eventually released. Now, in the course of finding some of this information we discovered that what was in their books didn't correspond to what was actually in the raw information. When you're allowed to produce a book that frames the question and frames the answer, it has an entirely different meaning when you see the whole document that it was prepared from. So our effort was to just get the actual correspondence from the ministries within the government to see what they actually said. I don't think that should be private information and I don't think it should be so difficult to get.

**Mr Sterling:** Yes, I guess the big problem you have when you're trying to draft legislation is that you can't deal individually with what happened in your case.

**Ms Thomas:** No. I realize that.

1610

**Mr Sterling:** It's important for us to hear your story. We have to try to draft general rules so that somebody else in Ontario who's faced with the same problem isn't faced with the same kind of delay, and I agree with you on the delay issue. I think that the government's used 30 days as its minimum, not as its maximum, that we try to deal with it.

I was just trying to explore how we could—because we've heard so much about people abusing it from the municipalities' end—perhaps put requesters in two different categories: those who have some kind of community support and those who are acting on their

own, a whim perhaps or whatever. I guess my concern is that somebody acting on a whim or who isn't really that concerned about it but is more interested in creating mischief is not creating a great tax burden on the rest of society. So I guess that's what I was trying to do, was trying to find some kind of median in between.

**Ms Thomas:** I agree with what you're saying but even to impose a \$5,000 fee on a small community such as ours—I mean, we are obviously raising funds and the funds were intended to hire expert witnesses. If we have to spend money just to get the information that we need, we need to be on a level playing field with the consultant. We need the information that he has gathered through various means in order that we can understand what they're doing.

**Mr Wiseman:** Thanks, Marion, for coming. I guess it really leads from the question that I asked the previous presentation. It really strikes to the heart of what we talk about when we talk about open government and what should remain confidential and at what times and what should be public access and how it should be accessed.

Do you have any ideas or thoughts on what should be public access and how it could be arranged that it should be delivered? The act suggests that there should be reading rooms available within municipalities where individuals such as yourself could go and do the research and do the work and get the information. Do you have any thoughts on, since you've done a lot of this, what would be the most expeditious way of getting information into public hands, opening up the whole process?

**Ms Thomas:** Actually, I did experience what you're talking about at the region of Durham, surprisingly enough. I sent a request for information to the region of Durham. They responded. They set aside the files. I phoned and made an appointment to go in and review them. At that time, I went through all the files, indicated which ones I would like photocopied, which saved a large waste of paper, and three or four days later they had them ready for me to pick up. I just picked up what I had asked for and then they invoiced me.

The only thing I don't know is if anything had been taken out of those files prior. I would imagine somebody would have had to have reviewed them before I saw them and I don't know if anything was missing, if I saw a complete file or not.

**Mr Wiseman:** Do you think that municipalities and governments should be required, maybe when they're filing those documents, to classify them in a way that would allow for: "This is very innocuous information. We can have that public file. If somebody wants to come in and read it, we'll put it in the filing cabinet and they can see it but they just can't take it with them"; "This has privacy of individuals documents, so we won't allow that. They'll have to access that through freedom of information so we have a screening system"?

**Ms Thomas:** I would think there would be some merit in doing that. Some of the things that I've asked for, I should really not have to go through freedom of information at all. I think they should have just been made available to me when I requested them.

I found the situation that I was in it was just so difficult to get anything that it became imperative that I documented everything. The only way I could really do that and know, first of all, that they'd received my letter they acknowledged the receipt of my letter instead of I'd just sent in a request and then didn't get anything. Then I would call back and they'd say, "We can't find your letter, it's gone," or "It never arrived." This way, I know immediately whether they have received the letter or not. That's why I've put all my requests in freedom of information format, so that they can't be ignored.

**Mr Wiseman:** This raises an issue of public accountability, because I know, prior to being elected, the frustrations that we had with Metro in that getting an kind of information out of them was like—it just wasn't coming. They'd ignore us, even when we went—

**Ms Thomas:** You arrange to pick up the maps and when you get there, they say, "There aren't any maps."

**Mr Wiseman:** Yet when I asked for them all at the Bill 143 hearings, I managed to get a lot of documentation that previously we were unable to access. Do you think that some kind of local public accountability should be somehow introduced into this act in some way? One of the comments that is being suggested by the opposition is to allow MPPs to access freedom of information with no fees and so on. That was one of the suggestions. What about local councillors? I think that was another suggestion.

**Ms Thomas:** Well, we'd have to get our local councillors to write the letter. That might be difficult. Certainly I think there are some merits to that. Perhaps an MPP was able to review the request and—I think it's pretty easy to decide whether the request is frivolous or not—and only request those things that the MPP deems to not be frivolous. Maybe there could be a priority put on those items.

The other ones still have to be dealt with, but the time lag is just horrendous. We're into this over a year now on the one example and we're not any further ahead than we were back in September 1992.

**Mr Wiseman:** Well, 1989—we're still looking for that list.

**Ms Thomas:** That's right, yes.

**Mr Elston:** As Mr Sterling had indicated, we've been really hit with the whole issue of frivolous and vexatious. I presume that you probably were a very welcome individual when you started filing the follow-up request. Did anybody suggest to you at some point that you were being difficult or being frivolous?

**Ms Thomas:** No, they haven't.

**Mr Elston:** So they've treated you as a serious filer.

**Ms Thomas:** Well, they were all serious requests. I just term it being jerked around. If I hadn't been jerked around so badly, I probably wouldn't have sent so many. It's like, "Okay, what can I ask for now?" It actually became a little exercise in saying, "What else would I like to see?" It's not that I wouldn't like to see those things, but I probably would've been more satisfied in getting the original things that I'd asked for.



**Mr Elston:** What you were hoping to do then basically was sort of by extension of the pieces of information you got, perhaps leading you into getting the information you actually felt was available for distribution to you then. Is that the case?

**Ms Thomas:** No, I looked at it as a make-work project for them.

**Mr Elston:** So you could've been classified as one of those people who want to tie them up.

**Ms Thomas:** No, I wanted the information, but at the same time, what I really wanted was my original request filled, and not having succeeded in that, having them tied up in the appeals process, trying to argue either poverty or health and safety. At the same time, I thought, "If you're going to put me through this, I'm going to give you more." So I just started on another round.

**Mr Elston:** You'll be happy to know that there've been several suggestions that when somebody is seen to be doing that, that we should make recommendations that the freedom of information act be amended to allow the head to disregard that. I presume you would be opposed to that type of recommendation.

**Ms Thomas:** I expect that you probably get requests that really are frivolous. It's not that eventually I wouldn't have wanted this information, but I expected to get sort of an orderly flow of information. If I requested comments from the Ministry of Agriculture and Food, I expected maybe within a month to a month and a half I would have those in my hand. I don't expect to have to wait a year and a half to get them in my hand.

1620

When you suddenly realize you're going to have to wait more than a year perhaps until you get the appeals processed, you realize how important it is to get the other things that you may want to look at, too, in immediately. With this time lag, there's no point in asking six months from now for something that you needed yesterday. Whether you need it or not, you have to sort of anticipate what you're going to need and start asking for it right away.

**Mr Elston:** I noted that you had requested a change in the time lines. As a requester with legitimate needs, what would you prefer the time restrictions to be?

**Ms Thomas:** When we had to respond to our appeal we had 30 days in which to respond. When we called to find out when we could expect a decision, it seems to be open-ended.

**Mr Elston:** You would like a limit on that?

**Ms Thomas:** There should be some sort of limit within reasonable expectations.

**Mr Elston:** Thirty days, 90 days.

**Ms Thomas:** Even if it was 90 days—it took more than nine months and we had no idea when that would actually arrive. I don't know if I have the letter here, but it was actually dated October 28, I think it was, of 1993, the following year from the original request. Our appeal was sent in in January of that year so that's 10 months, I guess, before we actually received it.

**Mr Elston:** What about the prospect of being asked

to pay a request fee for your type of request? Could you understand, for instance, if people say they would like to have a request fee to make sure people are serious about that, because that recommendation has also been made to us?

**Ms Thomas:** What I found is, the federal government does charge \$5 for each request. It's a processing fee; that's what they deem it to be. I find I take a little more care with the letter that I send. I try to be more explicit. First of all, my \$5 is here. I don't want it just caught up in—so I don't have an objection to that. Five dollars is not unreasonable if you really want the information, especially compared to the thousands of dollars they actually want for the release of the information.

**Mr Elston:** What about an appeal fee, which has also been suggested? I think the number of \$30 has been basically given to us by at least one presenter. Any comment on that?

**Ms Thomas:** No. My comment on that is I would not support a fee for an appeal process. Essentially what you're doing, you request from the municipality or the province some information. The province or the municipality comes back and says: "No, we're not going to give you this," or "We will give you this but we're going to charge you this much for it." I think you have to be able to appeal those decisions to an independent source.

**Mr Elston:** Have you found any better performance since the act came into effect in 1991 as opposed to—

**Ms Thomas:** Certainly.

**Mr Elston:** You have found it to have helped?

**Ms Thomas:** We couldn't get anything before that. As Jim was talking about with the Brock West information, they just denied any information existed. We couldn't get anything, so it's certainly opened up from that.

**The Chair:** Ms Thomas, I'd like to thank you for coming before the committee here today.

We've got a couple issues in the committee that we should decide some direction.

**Mr Elston:** Can I ask a question on administration again—a very good question this time. I couldn't remember whether or not we have asked research to provide us with the Ministry of Health paper on the principles it would use for freedom of information. If we haven't asked for that, I wonder if we could get a copy of it. I sense we may be moving a little closer to considering, certainly seriously considering anyway, that issue as part of our deliberations. Before report writing, it might be helpful for us to see those.

**The Chair:** Maybe a little bit of direction to the researcher here to the point of the materials that are being asked by the committee to come forward with and yet we're looking at a time frame of writing the report. With this additional information required, it sort of puts the report back a little bit and maybe we have to take a look more at writing the report when the House comes back, otherwise asking extra time in order for the committee to sit, for the House leaders. This is a decision that has to be made by the committee, with this additional information coming forward. The committee would have to be in

agreement. We've got one year to write this report.

**Mr Sterling:** What additional information are we talking about?

**The Chair:** I think a few members here have asked for a fair amount to compile information for the committee to consider.

**Mr Elston:** I think that in my situation, Mr Sterling, it's just a matter of the copy of the principles that Health has set out publicly for its freedom of information and protection of privacy work, but I know Mr Hope has asked for three or four different things to be provided, so there is some there.

**Mr Sterling:** As we discussed before, there are two issues here, in my view. There is the existing act as we now have it and amendments to it, and we've heard people talk generally about that act. We've heard the odd brief about extending the scope of the act to include other institutions. I say that that's a second issue.

The first issue in terms of dealing with this act—we've heard submissions on various different aspects of it. My view is that we can't write this report three months from now because we will not have the same makeup of this committee, we will have forgotten what people have said and therefore to do it three months from now is like not having these public hearings. We are better off to look at it, in my view, next week and try to come to some conclusion on the existing act and what people have said about the existing act.

There weren't that many briefs this week. Would it be unreasonable to ask for a synopsis of what people have said about the existing act, taking away the other issue and postponing that and perhaps dealing with the inclusion of other institutions after we would write or try to get some conclusions on what we've heard?

**Ms Swift:** My sense is from all the briefs that we've had and from the ones that we received before is that we're probably looking at about 55 to 60 written submissions. Not all but some of them are fairly detailed and I've already started to prepare the summary of recommendations. I think that I would be in a position to give you a summary of all of the recommendations made to the committee some time next week. I don't know if it would be Tuesday; perhaps Wednesday.

Having said that, there are still a few outstanding requests for information: the information from Manitoba that Mr Tilson requested, information from British Columbia that you requested and the legal opinion on the marginal notes and whether that falls within the record, those kinds of things.

That is going to make it difficult, I think, for the committee in two senses: (1) for me to prepare the information and (2) for the committee to consider it, but there may be ways to get instructions from the committee on perhaps some key issues that the committee wants to consider and then perhaps draft a report on technical aspects that would not involve so much discussion from the committee.

I think it would be hard at this point to prepare all of that information and then to come forward with a document that would allow you to focus discussion around

giving instructions, but it depends on how big a report you want it to be. If it's to be anything like the last review of the provincial act, that's not going to be possible in the next week or two weeks even. That took six weeks to write.

**Mr Sterling:** What's the purpose of meeting, then?

**Mr McClelland:** I think from a practical point of view, if you recall, early in the week I raised the issue that I think what happened when we did the review in 1991 with respect to the Ontario act was that there was the sentiment that there ought to be some extension, but there was not enough time focused and devoted to it and I think Mr Elston alerted us to that possibility early in the week. I wanted to underscore that.

It seems to me that we might be caught in a situation that I think Norm makes very well, that if we delay it for any length of time we really lose—I don't want to say any impact, but certainly the benefit of having had the hearings. Therefore, it seems to me that what you have to do is come up with somewhat, if you can, the best of both worlds. Proceed with what we have, do what we can in terms of the issue of health institutions, some of those issues that have been raised, with a very, very strongly worded recommendation saying that we see this as only a preliminary focus or, if you will, open the door on this issue, come back with a request, whether it be now or at a future appropriate time, to do that particular issue, focus the issue in terms of the extension of the purview of the act, the scope of the act, and deal with that in a very comprehensive fashion.

It seems to me that this way you get the best of both worlds because I think that there's a sentiment, not only a sentiment, but some very valid points made that we need to look at the extension of the act. But I don't think that we've addressed that as comprehensively and in the detailed fashion that it requires. To the extent that we can do it next week and get the ball rolling I think we should deal with it as soon as possible rather than later.

1630

**The Chair:** If I understand, when the subcommittee met, that was the focus point of what we were put to task to do. The minister had asked us to look at other areas, but I don't think he stated that that had to be written in the report. Those were areas to take a look at, the hospitals and colleges and universities, I think, keeping an open mind of presenters who were coming forward.

This is for discussion between the subcommittee members who were there, if they're in agreement on that. Mr Wessinger, any comments? I'm just opening it up so we've got some discussion here.

**Mr Wessinger:** I think we should continue to meet next week with respect to dealing with the outstanding matters. Obviously, I think the subcommittee should have a meeting early next week to deal with what additional persons we wish to have scheduled to come to appear before us. I certainly concur with Mr Elston's request with respect to the Health matter and I think we have to just continue proceeding and see what we can accomplish next week. Maybe we can define some of the issues to give some direction to the researcher on where to go



from here. How long that's going to take next week, I'm not certain.

**Mr Elston:** I think we have to sit next week. I think we have to take stock of where we are after Tom comes in on Tuesday obviously to tie that together. Then we can take a look at perhaps where we are with the summaries.

I'm not sure that it wouldn't give some help, for instance, if we had sort of a list, at least an initial list, that we couldn't eliminate some of the areas that we might agree upon fairly quickly and then we could focus our attention on the areas of real concern later on. I'm happy to see what we have on Tuesday to work with, but I think we do have to come back and finish as much as we can.

I'm still intent on discovering what we do with the suggestion, if the children's aid societies, universities and hospitals do fall within our minds as a second question, as Mr Sterling suggests, whether or not we ask anybody to come in and see us. It may very well be that we'll write our report and say, "This is how it's functioning and we recommend that steps now be taken to find out how freedom of information can be made applicable to hospitals," and whatever as our second recommendation, without us actually doing the work, but basically looking at it as a request for the committee to engage in those as thoughts.

That may be as far as we want to take it. In fact, it probably isn't going to allow us, in terms of time, to get into the whole issue itself, but maybe that's enough to finish off the report and get it done and then let people prepare to do what I think has got to be done, at least from my point of view, and that is to try to figure out how we get something done that has been promised for now six years. I think it's been actually an issue that's been ongoing for years and years.

So I think we might very well find a solution to end

this sitting of the committee that might allow us to wrap it up and then get on with the second stage of inquiry.

**The Chair:** That's your idea.

**Mr Wiseman:** I would agree that we should forge ahead with this. I agree with Mr Sterling and Mr Elston on this one. I think that we'll expedite this. After we hear from Mr Wright on Tuesday, we should have available to us the technical people from the ministry so that we can continue to make sure that we understand what's going on and to forge ahead. That would be my added recommendation, that they be available for us to question and move ahead with on Tuesday.

**Mr Sterling:** I understand, two presenters and Mr Wright on Tuesday morning.

**Clerk of the Committee (Ms Tannis Manikel):** It's one joint presentation; it's two people for half an hour.

**Mr Sterling:** What I would like to do after that time is perhaps the committee could identify the issues which were raised. I think one, of course, is the "frivolous and vexatious" issue, and the application fee issue and the cost issue. Those are three that I can remember. Perhaps at that point in time we could say to our researcher, "Can you go to the briefs, dig out from all of the briefs what everybody said about application fees, what everybody said about fees, what everybody said about 'frivolous and vexatious,' and get what the feds are doing and what BC is doing," and that kind of stuff. Then maybe we can come to some conclusions on those things in terms of recommendations while we still have this group here, so when we're meeting in May and talking about this and there are some brand-new people, we don't get into the whole issue again with just brand-new people.

**Ms Swift:** I hope the summary will do that. I will categorize some of those things and focus some of those issues for you, so you may be able to do it from there.

The committee adjourned at 1636.





*Continued from overleaf*

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

**\*Chair / Président:** Hansen, Ron (Lincoln ND)

**\*Vice-Chair / Vice-Président:** Wessenger, Paul (Simcoe Centre ND)

Dadamo, George (Windsor-Sandwich ND)

Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)

MacKinnon, Ellen (Lambton ND)

Mathyssen, Irene (Middlesex ND)

**\*McClelland,** Carman (Brampton North/-Nord L)

**\*Morin,** Gilles E. (Carleton East/-Est L)

**\*Sterling,** Norman W. (Carleton PC)

Sullivan, Barbara (Halton Centre L)

Sutherland, Kimble (Oxford ND)

Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)

*\*In attendance / présents*

**Substitutions present/ Membres remplaçants présents:**

Cooper, Mike (Kitchener-Wilmot ND) for Mr Dadamo

Elston, Murray J. (Bruce L) for Mrs Sullivan

Hayes, Pat (Essex-Kent ND) for Mr Paul Johnson

Hope, Randy R. (Chatham-Kent ND) for Mrs MacKinnon

Tilson, David (Dufferin-Peel PC) for Mr Villeneuve

White, Drummond (Durham Centre ND) for Mrs Mathyssen

Wiseman, Jim (Durham West/-Ouest ND) for Mr Sutherland

**Also taking part / Autres participants et participantes:**

Huget, Bob (Sarnia ND)

**Clerk pro tem / Greffière par intérim:** Manikel, Tannis

**Staff / Personnel:** Swift, Susan, research officer, Legislative Research Service

## CONTENTS

Thursday 20 January 1994

<b>Municipal Freedom of Information and Protection of Privacy Act \ Loi sur l'accès à l'information municipale et la protection de la vie privée</b> .....	M-215
Renfrew County Legal Clinic .....	M-216
Terry Kirby, executive director	
Community Legal Assistance Sarnia .....	M-220
Grant Timms, vice-president and co-chair, consumer liaison committee	
Margaret Capes, staff lawyer	
Ontario Legal Clinic Steering Committee on Social Assistance .....	M-224
Nancy Vander Plaats, chair	
Ian Morrison, secretary	
Victoria and Peterborough County municipalities .....	M-227
John Ewart, law associate	
Stephen Kaegi, clerk-treasurer, Belmont and Methuen townships	
Patients' Rights Association .....	M-230
Harry Beatty, vice-president	
Township of Mariposa .....	M-233
Stan McCormack, councillor	
Elizabeth Carruthers .....	M-236
Ontario Public School Boards' Association .....	M-240
Helena Nielsen, vice-president	
Guy Giorno, legal counsel	
Peter Gnish, freedom of information coordinator, Halton Board of Education	
Gail Anderson, associate executive director	
Ontario Teachers' Federation .....	M-245
Margaret Wilson, secretary-treasurer	
Jim Head, president	
Ruth Baumann, executive assistant	
Marion Thomas .....	M-248

*Continued overleaf*



(A700)  
X-20  
-L20



M-16

M-16

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 25 January 1994

# Journal des débats (Hansard)

Mardi 25 janvier 1994

Standing committee on  
the Legislative Assembly

Comité permanent de  
l'Assemblée législative

Municipal Freedom of Information  
and Protection of Privacy Act

Loi sur l'accès à l'information  
municipale et la protection  
de la vie privée

Chair: Ron Hansen  
Clerk: Lisa Freedman

Président : Ron Hansen  
Greffière : Lisa Freedman



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Tuesday 25 January 1994

The committee met at 1013 in the Trent Room, Macdonald Block, Toronto.

MUNICIPAL FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY ACT

LOI SUR L'ACCÈS À L'INFORMATION MUNICIPALE  
ET LA PROTECTION DE LA VIE PRIVÉE

ARLENE REINSBOROUGH  
DAVID HOGG

**The Vice-Chair (Mr Paul Wessenger):** This meeting is now prepared to commence. The first presenters, I understand, and I'd like to welcome you here today, are Arlene Reinsborough and David Hogg.

**Ms Arlene Reinsborough:** Thank you for the opportunity to present to this committee. I left a very important job in the private sector this morning and probably cost myself a few thousand dollars just to present to this committee, but that's how important this is to me.

It is not necessary to be a user of the FOI act to gratefully acknowledge with thanks the FOI commission and its services to private citizens like myself. Whether we use it or not, the act is there for us, the little person in the big cog of government bureaucracy.

Without the Freedom of Information and Protection of Privacy Act, I am convinced that information would not flow from the very public sector institutions that taxpayers are forced to maintain through our tax contributions. By assisting citizens in obtaining information that has in past and recent history commonly been withheld from public scrutiny, the FOI commission assists these public institutions in remaining accountable to the public that they serve.

For the common good, my hope is that the FOI act is endowed with even greater impact in the future. Many lives have benefited because it exists. Information is the cornerstone of knowledge and involvement in the public process. In this age of electronic data transfer, the free flow of information allows for good, honest, open government.

To be informed about the government Canadians financially support is, I believe, a right which is critical to protect. If a person desires to exercise this right to access, now or in the future, the act should be there without restriction. After all, this information, which public institutions create and frequently attempt to non-disclose or restrict, belongs to us.

I object to any attempts to limit the power of the FOI act or to redefine words such as "use" or "abuse" or "frivolous" under the FOI act by public sector institutions or lobby groups for those same institutions that I financially support with tax donations.

I object to any attempts to limit or redefine portions of the FOI act, especially those pertaining to access, freedom to access or the insertion of or definition of the words "abuse" or "frivolous" under the FOI act, especially by any public sector institution I financially support.

I object to any attempts to redefine or discriminate against who may access or how they may access public information. The public sector already has enough ways and means of disallowing people access to information by classifying it, as they have already demonstrated in recent legal cases.

I strongly support any attempt to extend the powers of the FOI act even further for the sake of preserving and serving democracy and personal freedom and the common good of the majority. I applaud and strongly support the FOI act, as by its very existence it assists citizens in minimizing the dangers of public sector corruption and abuse. It provides the only vehicle for disclosure and access to information available to the majority.

The flow of information and the freedom to access that information is crucial to the freedom of humankind. I implore you to preserve and support this freedom.

**Mr David Hogg:** Unfortunately, the Municipal Freedom of Information and Protection of Privacy Act needs to be strengthened. I cannot tell you in an adequate way how much I value the Freedom of Information and Protection of Privacy Act. It has been absolutely invaluable in getting information which otherwise would have been impossible to access, information many of us value very highly. This point simply cannot be stressed too strongly.

My efforts have been concentrated in the area of schools education. You are probably aware of the public concern about the quality of learning in and the quality of administration of our school system. It has been possible to use the information collected to specifically support those concerns.

The IPC is one government agency for which I have the highest regard. It took me four months to get the first information I asked for under FOI. If I had followed directions from the institutions, I would have had to pay more than \$1,500 for documents I eventually got free. The information I obtained was critical to assessing how the Metropolitan Separate School Board, which I will later refer to as MSSB, was performing in its responsibilities to its students and its taxpayers.

Commissioner Tom Wright talked, if not on the same radio show I spoke about this issue, at least in the same week. His theme was that he hoped institutions would voluntarily release information and that he would work himself out of a job. I was very sympathetic to that viewpoint. Experience some year and a half later tells me that will never happen.

Institutions are exceptionally reluctant to yield information the public not only has a right to have, but needs to have in order to assess the performance of institutions the public funds with billions of dollars, institutions which have previously been unaccountable to the public. In fact, our education administration gives every appearance of operating under a siege mentality. This makes it excep-

tionally difficult to access information even when rights under the FOI and POP act are exercised properly and responsibly.

For instance, the IPC will be able to tell you how many times it's been necessary for me to appeal the MSSB for deemed refusals, yet I'm told no penalty can be imposed on the MSSB for this tardiness.

1020

As well, there have been a number of instances where, instead of looking for ways to ease access to information, unreasonable fees have been slapped on the request. If it is the committee's wish, I can supply specific details of specific instances.

Finally, MSSB told me it was going to use the act to delay access to information. I was told specifically that even if I appealed, the delay built into the appeal process would mean I would not get the information until it was ready to release it; that in spite of the fact that the Ministry of Education and Training and another board would release without this delay. That is intolerable.

My request to this committee is that the act be strengthened. In particular, I request that when an institution is late without explanation or cause, when an institution attempts to block access by substituting an unreasonable fee or by other means, or when an institution deliberately blocks or delays release of information, progressively more severe penalties are imposed.

I would like to suggest that the threat of a penalty might just reduce the overall cost to the institution in spending time and effort on creative blocks, to the IPC in fielding unnecessary appeals and the cost of time and effort to people like myself who try to keep the public informed at no cost to the public purse for our time.

**The Vice-Chair:** Thank you for your presentations. We now have time for questions.

**Mr Murray J. Elston (Bruce):** I'm interested in the issue of frivolous because that's been raised several times. Although you say these records are all accumulated by taxpayers' dollars, why should I as the taxpayer who's paid to get this information in some record form have to pay for the activity of one individual, particularly if he uses the system to throw a wrench into the system, as I was reading in another brief here, or if there is somebody who makes his living out of doing freelance journalism, for instance, and this is the way he gets his information free, so to speak?

I know you're opposed in the sense of either having a user fee or otherwise, but can you tell us how we come to grips with providing the balance that is required for me as the general taxpayer who doesn't use the system?

**Ms Reinsborough:** First of all, the word "frivolous" is something that someone is going to define. How frivolous is it to ask, for instance, for the discretionary expense accounts of the director of education because you know that as a taxpayer in your community the cost of education is 58.8% of your property tax and \$300 million is the budget?

Tell me how many companies on the Toronto Stock Exchange have a budget of \$300 million, and would you allow them to operate in total non-disclosure? Would you

allow their director not to disclose his salary and maybe even just the range of his salary? Would you have to apply to the IPC to get the director of education to disclose the \$40,000 discretionary account? If you were to be asked to pay \$54,000 for that account, would you consider that reasonable?

Also, most of the people who access information are not members of the press; they're people, private citizens like myself who do not own corporations that get money from this information. We're just interested as taxpayers in how much it's costing us to maintain a system, like the system of education, and why we cannot get from the Provincial Auditor a full value-for-money audit because the Education Act does not permit the auditor to do such a audit. If you recall from his last report, he didn't look too kindly towards the education system because of the way it handles my money.

I don't think those kinds of concerns can be considered frivolous, but under any act, who is going to be the judge? Is it going to be the FOI manager who's going to judge frivolous, the one who is the assistant to the director of education, the one who wrote for the Ontario Public School Boards' Association in the report you have here? Is it going to be he who decides what is frivolous? If it is, we will never get information from school boards.

**Mr Elston:** I understand where you have been. That wasn't my question. I understand there are legitimate ends to be used, but there have been complaints. For instance, one piece of correspondence here says they got 442 applications for information from one source within the first two years of the act and the person, when interviewed on TV or the radio up in his area, said, "I just want to throw a wrench into everything."

My question was, what do we do as a committee to make sure we have the balance to allow you to get all that information which you have rightfully described as being appropriate? I might just add in parentheses here that we have talked about the issue with the minister and with Mr Wright, the commissioner, of perhaps disclosing the salaries of public officials. That's another issue that's being dealt with, but how do we deal with someone when it is a real effort to make sure that the local administration, particularly if you've only got 10 or 15 employees, is ground down by a whole series?

I don't want to debate the merits of a particular incident. I want to make sure we can get an answer, because both of you obviously are using the system and like it, but how do you make sure you get the good balance so that somebody doesn't drive the system to spend not only tens but even hundreds of thousands of dollars administering the system and thereby taking away from actual, practical programs?

**Mr Hogg:** There are two issues here. One is where somebody is deliberately trying to drive the system into the ground. If the person admits that, I for one would be very seriously against that. That is unconscionable, just as it's unconscionable if people don't release information.

The other issue is that if a person with an honest intent is driven to grounding the system or throwing a wrench into the system, that is something completely different. The question then has to be asked why this person with



honest intent is driven to this recourse.

I don't believe that the requests I made would fall into that category, but I can see that somebody will be driven to desperation by institutions that are reluctant to release information that should be absolutely free and open. As I say, there are two separate issues here and therefore they need to be looked at separately.

**Mr Elston:** So I as a person not involved in the issue between you and the administration should pay the price, both from the administration point of view and as the taxpayer, for your crusade, which I may even disagree with, by the way?

**Mr Hogg:** I think your particular responsibility is to make sure that the act can deal with both these matters in a sound and responsible manner. I don't think you need to make a judgement about the cost of them.

**Mr Elston:** But you see, I have to ensure that we're able to get the access to information, which is clear, but I don't want to have to pay for somebody who perhaps lost an election and decides, "Well, I'm going to take on the mayor this way and make his or her life hell by just requesting, day after day, information about all kinds of stuff and then he or she can't get any of the department officials to do the work of the day," if you know what I mean. As a taxpayer, I'm going to pay the whole shot eventually because I will pay for the people whose time is going to be wrapped up in covering the requests.

**Ms Reinsborough:** As a taxpayer myself—

**Mr Elston:** We all are.

**Ms Reinsborough:** —and a businesswomen myself, I would not mind paying for someone to access the act, because I believe in the right to freedom. First of all, there shouldn't have to be an act. Freedom should be available. After all, I pay to keep each and every one in this room working. That's what I do. I work to keep this whole building working. Each and every one of us does that, including yourselves. You all pay taxes, I assume, so you all are taxpayers.

Consequently, I feel that if you let a government go covert and protect its information, you're taking away my right to democracy. I feel so strongly about this issue, I'll tell you, that I'll chain myself to your doors, because you are not getting away with removing my right to freedom, and to know what you're doing is my right to freedom because information is the new data highway to freedom. Whether it costs us or not is not the point here; the point is it should be free.

If you think that the IPC commission and the cost to taxpayers is too high, then open the doors to the educational facilities and all the other public sector institutions and let us look at the information and see what we need. Let us pay for the cost of photocopying it. Let us pay for the discretionary right of looking at it and deciding what we want. You have options besides the fact that you want to deny us the right to access this information. Information that you create in these institutions is ours.

**Mr Elston:** I don't mean to deny you access to anything, but there still are the costs associated with administration. That's the problem.

**Mr Hogg:** Let's have some specific incidents.

**The Vice-Chair:** I don't think we want to get into a debate here. Mr Elston has used his time so I'll now move to Mr Tilson.

**Mr Norman W. Sterling (Carleton):** The first question is a specific question. The individual we're talking about happens to be in the Penetang hospital for the criminally insane and he has used up, as I understand, half a million dollars of government revenues in freedom of information requests. Now, I don't support allowing this individual to carry on, thank you. My taxpayers do not view that as a prudent expenditure of government money.

**Mr Hogg:** I think we would agree with that, but we've made that separation already.

I'd like to go into very specific items. One of the freedom of information requests that I made was for the results of the schools that participated in the 1990 provincial math review. That was the first request I made to the MSSB.

**Mr Sterling:** No, get back to my question. We're talking about people who are citizens of this province, who are not distinguished in the act, and I don't think that this committee is going to distinguish one citizen from the other in this act. How do we limit those kinds of individuals from abusing taxpayers' dollars?

**Ms Reinsborough:** How many of those individuals do you have on record at this point?

**Mr Sterling:** I don't know. I'm not part of the government. I know of this individual.

**Ms Reinsborough:** You're talking about one. So if you're talking about one—

**Mr Sterling:** There probably are a dozen.

**Ms Reinsborough:** —out of many millions—

**Mr David Tilson (Dufferin-Peel):** One cost half a million dollars. That's pretty good.

**Mr Sterling:** Yes.

1030

**Mr Hogg:** Are there lawyers? Is the government not capable enough to screen out these unreasonable requests?

**Mr Sterling:** He has a right to ask for these things.

**Interjection:** There's no way to screen them out.

**Mr Hogg:** We can't be held accountable for deficiencies in the current act. If there are deficiencies, then those should be strengthened. I think we would support that position and encourage the lawyers to use their particular skills to do that.

**Mr Sterling:** But it's the act, and it's abuse and it's overuse, uncontrolled, by an individual. Our problem as the Legislative Assembly is to construct language to cut this individual down to a reasonable amount of use of the act, and by doing that we have to include everybody. We can't just say, "Joe Blow," who is up in Penetang, "because you're in this kind of institution, you're different from other people." We have to have some kind of general framework in order to do this. That's what the debate's about.

**Ms Reinsborough:** The danger in doing something

like that is that people like myself, who are trying to do good for the majority of people in my community and have the support of the majority of people in my community and write articles free of charge to papers that want to know about this issue, are going to suffer because of course the institutions are going to find ways around it. They've already found ways around it.

Another thing you're not putting into perspective here is that one individual is misusing the act. I have said in my statement in the final paragraph that there are so many ways around providing information, that institutions can be so covert at present, that they can be so destructive in how they destroy information and not have it presented, that your statement is irrelevant, because if this person is asking for that much information, costing the system that much, the system could get around providing that information by being just as covert as the ones we've dealt with in the public sector. So there are ways of preventing information from being gotten already.

**Mr Sterling:** Unfortunately, that's not the case.

**Ms Reinsborough:** Unfortunately, it is the case.

**Mr Sterling:** Under the present law, any individual can make a request and require two hours of search time before anything happens, and that's a lot of money if you make a lot of requests.

**Ms Reinsborough:** Do you charge him \$54,000 for the information?

**Mr Sterling:** Not for the first two hours. For the first two hours, you can't charge anything.

**Ms Reinsborough:** It takes a creative person to think up two hours and then add six more on and ask Joe in the office how many more he can add and come up with a \$54,000 proposal. I'm sorry, but that's what's happening. If you want proof of that, I'll give you hard copy.

**Mr Sterling:** I'm saying there are two sides to this equation and it's not black and white on either side. That's what we're trying to wrestle with here, and we're trying to protect the taxpayer from an individual who has cost the taxpayers \$500,000 over the use of the provincial act. We have heard stories from municipalities where they're having experience with similar kinds of individuals in their areas, where individuals put in a dozen or 25 requests to get 25 times two hours' search time by their municipalities free and then don't even bother to ask for the information when it comes out.

**Ms Reinsborough:** How would you propose that they not use the FOI act, then? Would you not think that the municipalities could possibly let their information flow, thereby reducing the FOI requests and thereby actually involving the public in the process of making decisions and opening their papers and knowledge to the public? That would be a novel approach.

**Mr Sterling:** We're dealing with a specific problem here of abuse as brought before the committee and we're trying to find a reasonable answer to it. We're not questioning the very basis of the act. We all agree with the very basis of the act, and that is that information should be freely available, as much as possible, to the public.

**Mr Hogg:** Mr Chairman, if I can interject—

**Mr Sterling:** I don't want to get into a debate. I want to point out that there's a significant other side to this thing, and by coming and saying *carte blanche* everybody has a right to everything free is a non-starter, as far as I am concerned as a politician. I must protect the taxpayer more than you are proposing.

**Ms Reinsborough:** We never said "free." We just said, "Do not"—the words "abuse" and "use," that's what we said. Free is something that has to be discussed. Already, we've paid for information and it is not always free. But to charge this person \$54,000 for information is ludicrous.

**Mr Hogg:** I would like to ask the committee to be sensitive to our situation here. I don't think that we personally have to answer for somebody who happens to be in a particular institution up north. I think the questions might be appropriately addressed to the points that we have raised and our particular situation, and I think we will answer those as best we can. I don't think that we should be subject to questions for situations over which we have no control.

**Mr Pat Hayes (Essex-Kent):** On the same line here, on the issue of frivolous or vexatious requests, I think all members understand the concern that everybody should be able to get the information that's necessary for them to find out what they need. But at the same time, we have had examples here in front of this committee—was it the Metro police, for example?—where a person requested to know how much toilet paper the chief used. Then we have other incidents, which I think some of the other members alluded to, where a woman said that she didn't like a particular answer so she decided she would flood the system.

I know where you're coming from. But at the same time, do you feel that those kinds of requests should be answered without any kind of a fee? Do you feel that those are frivolous kinds of requests?

**Mr Hogg:** On the face of it, I certainly would agree that they're frivolous. But the situation here is that we have two sides of the coin. We have those people who have legitimate requests and are being frustrated in their efforts to get it, and I'm prepared to discuss specific instances with you, and there are those people who misuse the system.

Both of us are here to complain about potential misuse of the system. As to any misuse, whether it's on the part of the requester or the requestee, so to speak, I think I can speak on behalf of both of us, saying that we would be opposed to that.

The delicate line that has to be followed here is to produce an act—this of course is always difficult because there's always, I guess, somebody brighter than the people who wrote it who would look for loopholes. The problem you're faced with is to write an act that protects legitimate access.

1040

**Mr Hayes:** I think that's what we're really talking about here, legitimate requests. Some of the requests that we're aware of, anybody would call frivolous as far as I'm concerned.



**Mr Hogg:** Right. You're asking me to come up with solutions here.

**Mr Hayes:** No, I'm not. I'm asking your opinion on someone asking how much toilet paper the chief used. Do you feel that's not frivolous? I'll put it that way for you.

**Mr Hogg:** Certainly, on the face of it, that would be a frivolous request. The other side of that coin is that when an institution tries to charge me \$1,500 for information, that because I know a little more than usual I eventually got free, then I can turn the question back to you, do you think that's a frivolous use of the act?

**Mr Hayes:** I don't know what you were asking for or how much work you were requesting them to do.

**Mr Hogg:** One of the instructions that we got was to look at specifics, so let me give you a specific. I asked for the results of the 1990 provincial math reviews. There were 15 tests applied in MSSB and I asked for those results. They said that while they possessed the information, they didn't own it, that it was owned by the Ministry of Education and Training, so, "Please go to the Ministry of Education," and they were kind enough to send the request off to the Ministry of Education.

I got a reply back from the Ministry of Education wanting to charge me \$660; \$600 of programming time and \$60 for copying. I asked the question, "Why would I need to spend \$600 on programming time when the programming has already been done, the results have already been generated, they've already been supplied to the board of education, the board of education has these results, and you want to charge me \$600 of programming time?" If that isn't frivolous and vexatious, please tell me what is.

Then I was poking away further and further, and I said to the Ministry of Education, "Why won't you give permission to the board of education to release the results?" They said: "Oh, we'd be quite happy to do that." When the letter went to the board of education, lo and behold, there's order M-27, which in the case of Carleton board said that it had to release them.

Here am I, spinning my wheels. If I hadn't been persistent and if I hadn't been somewhat knowledgeable, I'd have been dead in the water and I wouldn't have got the information. Please tell me that isn't frivolous.

If you want me to go on, I'll spend the whole morning telling you about these horror stories, one after the other, one of which is currently there. I want their grade 12 writing results. They got them in the schools last April. They got the list of schools in 1991. They won't release them to me because they want me to work to their timetable and not to mine. They can do this and there's nothing I can do about it. I've got to sit there.

Sorry; you probably realize you've touched a nerve.

**Mr Hayes:** At the same time, whether it's your side or the other side, you're still saying that there are chances of having frivolous requests then, whether it's from a specific ministry or whether it's from an individual going to that ministry. Am I correct?

**Mr Hogg:** There is the opportunity for frivolous requests and there is also the opportunity for frivolous turndowns. If you need encouragement to go back to the

act in order for it to be rewritten in such a way that both of those items are less liable to happen, then we would encourage that.

**Ms Reinsborough:** What we're trying to say to you is that the public institutions themselves can be just as frivolous in how they treat a request, whether it's not under FOI or under FOI. Here you have a public institution protecting its information at all costs. If that means that it's going to cost the taxpayer more because it denies you your access, makes you go to appeal, forces you to use the system to the nth degree costing the taxpayer more money, well then, why can't the institution, when approached and asked for reasonable information like results because this person evaluates results, give us information about how much it's costing me to support them and where that money is going?

Why should I have to use FOI to get that? But if I have to use FOI, who is going to decide whether it's frivolous? If the taxpayer is going to be burdened with proving frivolous or abuse, then perhaps the public institutions should also be burdened with frivolous and abuse. It's only fair that they also have to prove turn-downs to us, because that should have to be proven. There should be some guidelines for them too because right now they get away with murder.

**Mr Hogg:** I would like to come in again at this particular point. I went into the MSSB and—this is on record; it's a matter of public record—I offered to cooperate with them. What I said was that I had some data on testing. I said I was prepared to share this with them if they would share their information with me. What happened? Nothing. Another person and myself went in. We again made this offer to cooperate and the answer that came back was that we should continue in the same way, using our request through the freedom of information act.

**The Vice-Chair:** The time has expired, and thank you very much for encouraging a lively discussion this morning.

**Ms Reinsborough:** May I just tell you one very brief question here? I asked what the best way was to access certain information and I was told by those public institutions to use the FOI act. I have that in writing if anyone would like to see that.

#### INFORMATION AND PRIVACY COMMISSIONER

**The Vice-Chair:** The next presenter is the commissioner, Mr Wright. We have Mr Wright scheduled for an hour, although I think there can be some flexibility in that regard. I assume the committee would be willing to go to 12 if that's necessary.

**Mr Tom Wright:** I want to begin by thanking the committee for providing me with the opportunity of appearing again as your hearings are drawing to a close.

Our office has been following your proceedings with interest and I'd like an opportunity to make a few final observations. I'm going to comment on five or six points that I feel reflect some widely shared concerns.

But before doing that, if I may, as a general observation, having been advised of the content of representations that have been made to you as well as reading some



of the written submissions, in my view what the committee has heard indicates that Ontario's access and privacy scheme is working.

I also think it's fair to say that there are improvements that could be made to that system and in some sense those improvements relate simply to the act, in essence showing its age. It's an act that was created back in about the mid-1980s. Many things have happened since that time. Rather than the act not addressing the concerns that existed at that time, it's simply that there are a whole series of new public concerns that have arisen which I think the act should be amended to address.

The other thing I would like to indicate to the committee is something that I think is very important, and it has not been mentioned as of yet. That's the importance of the role played by the freedom of information and privacy branch of Management Board secretariat. I think Ontario has benefited significantly by having a central group that provides advice and assistance to institutions which have to deal with the act, and that has played a very important role in terms of why this act has worked as well as it has. I certainly commend the efforts of the people in that branch, as well as the fact that the branch exists at all. It's a very important branch and it makes a very real contribution.

The other people whom I would describe as the unsung heroes with access and privacy legislation are the freedom of information and privacy coordinators. I notice that the committee that did its review of the provincial act in 1991 talked about specific recognition of those people in the legislation and made a recommendation to that effect.

These people have an incredibly difficult job. They have to respond to the requests received from the public and I have to say, again in the spirit of candour, that at times the role of the coordinators is very delicate in terms of their own position within the organization in which they work, because they may well feel bound by the requirements of the act and those sympathies may not be shared by others within the organization. I think they're placed in a very difficult position. Certainly, my experience has been that these people are very dedicated and hardworking and really are captured in terms of the spirit of both access and privacy, and their role should be formally recognized.

1050

One of the significant issues, and this is where I'll turn to the five points I want to mention to the committee, that the committee is going to be looking at or I would encourage the committee to look at is the extension of the coverage of access and privacy to hospitals, universities, social service agencies and professional governing bodies.

In our submission, we outline that we feel these public organizations should simply be more readily accountable, and also that provisions be in place to protect the privacy of personal information. We notice, and I have noticed in looking at the representations, that particularly as it relates to hospitals there seems to be significant support for the idea of extending access and privacy to the hospital setting.

The second point, which I made earlier and I would like to simply revisit for a moment, is the matter of the disclosure of salary information. As you know, we have called for the release of actual salaries, not salary ranges, of all provincial and municipal government employees. We feel this recommendation reflects certainly the spirit of the new regulations under the Ontario Securities Act, but takes that necessary step when we're dealing with public funds to increase the accountability and make salaries universally available to members of the public.

I've been told that the committee may be interested in comments from our office on the question of access to government records for visually impaired and hearing-impaired persons, and I'd like to take a moment to address that specifically. We have made a recommendation on alternative formats. We saw this as a starting point for addressing what I would acknowledge to all members of the committee is a very complex issue.

There is this question once again of balance between the goal of equality, of access rights for disabled persons, and concerns for cost restraint. But I believe, and I think this is a fundamental in terms of a starting point, that we must move forward to improve access to information for disabled persons while keeping the costs manageable, that the Ontario government would establish in the acts the obligations of institutions when responding to requests by persons with visual or hearing impairments.

This would be done, as I say, by amendments. As an interim step, it would be possible for Management Board secretariat to issue some form of guideline which would provide guidance at least to provincial organizations around their obligations relating to requests by disabled persons.

We've offered up what we see as a starting point in the federal model that's contained in both the federal Privacy Act and the federal Access to Information Act. It does contain this kind of obligation and sets out a test for determining whether or not the information will be provided in alternative format.

The fourth point I would like to mention relates to the need for changes to meet the access and privacy challenges of the electronic age. Once again, it's something that I referred to in my original presentation, the ability of this legislation to incorporate concepts which will not require that it constantly catch up to new developments. We've made some proposals which we feel will permit that situation to exist so that there isn't a need for periodic and regular amendments of the legislation to keep up with something that certainly, in my view, is virtually impossible to keep up with, and that's the new types of technology that are coming on stream literally as we speak.

You've heard from the presenters before me the concept of concerns around the building in, if you will, of access and privacy concepts. This is the other part of our recommendation around electronic and electronically stored records. I recall giving an example when I appeared last Tuesday. What we feel and what we are concerned about is that the move to electronic records result in improvements, result in lower costs, result in better access, and that considerations of both access and



privacy concerns be taken into account when these new systems are developed. We have made a recommendation to that effect in our submission.

There's one other point I'll speak to, which I'll say in advance I don't feel is really part of the review of the municipal freedom of information legislation, and that relates to open meetings at the municipal level. I know there has been some comment made in various submissions about that.

My information is that those types of concerns have been addressed in draft legislation on open local government which has been prepared by the Ministry of Municipal Affairs. My understanding of the package of amendments is that, among other things, it will provide that regular, special or committee meetings of municipal councils or local boards will be open to the public except in limited and exceptional circumstances. Certainly I think this would be a move that would foster more accessibility to local government and I would simply like to take this opportunity to encourage that movement be made in that direction.

The final point I'll mention of the five and six points I wanted to mention to you is to reinforce a point that, again, I think you've heard fairly regularly throughout your hearings, and that is the need for routine disclosure and active dissemination of government-held information.

We feel there should be records that can be automatically released; they're designated types of administrative and operational records on demand. To me, a simple example would be a statement of expenses, whether it's for an individual employee or an individual who would be on the executive of an organization. At the end of every month, would it simply not be a matter of routine practice that copies of these statements of expenses are simply put together in a file so for that anyone who happens to ask, they're simply provided as a matter of course? Why should they be required to go through a freedom of information request in order to obtain information which they're going to receive anyway.

When we're looking at the very real and legitimate concerns around costs, there are these kinds of very simple ways in which some of those costs can certainly be addressed.

In fact, our office has been working with Management Board Secretariat to try to develop some principles which we can share with the institutions covered by the legislation which will help them identify the kinds of information that will be made available to the public as a matter of routine. Our goal in doing this is to make it easier to use. It provides better customer service to members of the public, and just as importantly, it does reduce the costs associated with this legislation.

I noticed that at the opening of your hearings the Chair of Management Board expressed an interest in hearing the committee's views on a number of issues, including extension of coverage as well as disclosure of government salaries. We certainly agree that these are important concerns and are counting on the minister to see that these and other access and privacy concerns do rank as high priority on the government's agenda.

By way of closing, I have a request to make of the committee. I would ask members, when you're considering your report and the kinds of recommendations you'll be making, that you keep one central theme in mind and that is that laws, regulations, appeals and privacy investigations are not ends in themselves; they are a means to a larger purpose and to a different end. I think is the obvious point, but I will make it anyway. What we're looking at is shifting the government's attitude towards the information that it has and we're working to a day when government simply recognizes that it is the steward, not the owner of the information it holds.

Thank you very much and I would certainly be pleased to attempt to answer any questions you may have.

**Mr Tilson:** Thank you very much for your further comments to the committee. One of the questions I've asked several of the delegations, which got mixed reaction, is with respect to the issue of costs.

I believe there's no question that there are people who are obstructionist and they're out to cause havoc to all kinds of systems, whether it be municipal, provincial or whatever. I also believe there are people of authority, whether they be heads or whatever they wish to be called, who may be obstructionist, who may use the act to their advantage to not release information for political reasons or otherwise. I believe that.

The question I have posed to others is that with respect to the issue of costs, there doesn't seem to be any procedure for determining costs. I'm not talking about fees or user fees; I'm talking about costs as one would in a judicial type of setting. In other words, if there's an abuse of power by the head or if there's an abuse of freedom by the applicant, someone has to make that call.

We're wrestling with the word "frivolous." What is frivolous? I don't even know whether I know what it means. Somewhere along the line, someone has to make that decision.

The question I have posed is whether there should be some form of decision-making power to perhaps your office, the commissioner's office, or somewhere in the system where costs could be awarded against someone who is abusing the system.

1100

**Mr Wright:** There are two parts to my answer to that. First, there was a recent order issued by our office which indicated that it was our view that, as presently worded, the access and privacy act does not permit our office to award costs either way. I'm also aware that some of the submissions have talked, as you have said, Mr Tilson, about the issue of costs.

The concern I would have, and I speak on behalf of the commission when I say this, with imposing or giving the commission, for example, an ability to impose costs is that it changes, I think, the nature of how our commission tries to operate. We try to do a lot of our work through mediation. We feel that produces a more effective result for all concerned. My concern would be that we would lose some of the working together attitude that our office does try to develop, and I don't mean with institutions exclusively; I mean with all parties to an



appeal. As a result, we would end up with something that would be more of an adversarial process, which would end up with more formality, which would end up with more lawyers, which would end up with more costs and which would end up taking more time.

That's the kind of concern I would have, not so much with the notion itself, and I certainly appreciate what you're saying; it's more a matter of what it would mean if people got into a system as far as our office and saw us as this ultimate enforcement agency, which we really don't see ourselves as being. We feel our job is to be advocates for freedom of information and protection of privacy. That's the role we want to play.

**Mr Tilson:** I understand that. That difficulty is that's what it's become. It's become adversarial, unfortunately. People want information, they have an absolute right to information and they're not getting it. At the same time, and Mr Hayes gave one example this morning, there's no question that there are examples of people who are abusing the process, getting information for whatever reason. As I say, I don't even know what frivolous is. Many of us in this room may have difficulty defining what is frivolous.

The example I've given to delegations in the past is with respect to the Ontario Municipal Board. In the past, up until recent years perhaps, the municipal board very rarely if ever awarded costs. Now, particularly with competitors that are trying to slow down the process of particular developments and are appealing some zoning application or some development process simply to slow the process down—they don't even have any grounds—substantial costs are now being awarded by the Ontario Municipal Board. I believe that has stopped many frivolous claims.

The world, unfortunately, and the world of information is becoming more and more adversarial, like it or not. We've heard delegations: municipal, provincial, education. It is adversarial. That is why it's a solution which I have put forward as a solution. It may not be a good solution, but it's a solution which I hope other members of the committee would consider. If there's abuse of power either from the people who hold information or from people who are asking for that information, and there will be and will continue to be, what are we going to do about it?

**Mr Wright:** I am actually aware of your example of the Ontario Municipal Board and the direction it has taken around cost as it relates to competitors. I think the difficulty, and I speak from the point of view of the commission, is the nature of the inquiry process that the act actually brings out.

I would agree that many institutions as well as some users do feel it's an adversarial process already. I don't know if that's the kind of situation we would want to see perpetuated. I obviously feel that we should be working to a situation where that adversarial nature is eliminated; if not, at least reduced. I would wonder whether imposing costs might run the risk of perpetuating an adversarial situation which exists now, but may well soften as time goes on and people become more comfortable and familiar with what the act requires. I think this whole

notion goes to the root of many of the things the committee has heard.

There still is not, in my very humble view, an acceptance of whose information is being held by the government. There is this notion that in some magic way, government, which is clearly paid for by all of us as taxpayers, suddenly owns information. Until we get beyond that—and I'm not an unrealistic person in terms of the reality of being able to move beyond, but in terms of what I am trying in my term as commissioner, I am hoping that what we're going to see is a movement which does shift that kind of attitude so we're not caught with some of these very real concerns and the formalities of the process that we're having to deal with under access and privacy.

**Mr Randy R. Hope (Chatham-Kent):** Mr Wright, as you're well aware, and you've probably read the briefings, there was a presentation made where an individual and a councillor said that the rights of welfare recipients, their privacy, outweighs the money-protecting. They were using the synopsis that the right of the public to protect its money outweighs the rights of individuals to privacy, for public funds. They were making the comment dealing with welfare.

I also know that under the BC statute, subsection 22(3), which indicates around personal information and third-party stuff—I notice in your presentation today where you talk, and you said it a couple times as a matter of fact, about advocates. You're an advocate for the privacy aspect; also an advocate for accessing information. It's balanced there.

You've had the opportunity, and you know the problem that's going on in Hastings county and also in Lambton county with municipal elected officials wanting to know exactly who's on, their addresses, and everything about social assistance recipients. I'm really interested to hear your viewpoint.

A presenter took 25 minutes and allowed one minute for us to try to ask a question. It's hard to ask a question in one minute. She got good press out of it, but I want your opinion about what's going on with this whole issue around social assistance and the privacy of those individuals.

**Mr Wright:** As you say, I am aware of the types of submissions the committee has received on that issue. I have to be, and I ask for your indulgence on this, a little careful in my response to you only because our office has to work with the act as it presently reads. We may well receive a complaint around the very issue you raise in which we're required to make some form of report. I don't want to be seen as having prejudged that kind of complaint. But I think it's fair to say that the concerns that have been raised by the various presenters about the privacy of persons who are receiving social assistance are very real. I think the concerns they've identified as far as the potential is concerned for how the act could be used as presently worded are also real.

As far as this balance between the two is concerned, what I have not heard in terms of that issue is what rationale, if any, was used in terms of why that information was being requested. I think it's a very difficult



situation in terms of, once again, accountability for expenditure of public funds.

I think this committee is correct to be looking at this issue. I certainly feel that the answer, in terms of what the committee would do, would be in the form of some type of legislative amendment which, depending on how the committee felt about the approach that should be taken, would clarify the situation very directly.

I fully agree, as I say, that the words now used, and I believe it's section 32(d) of the municipal legislation, talk about things like disclosure of this kind of information to an officer of the organization if it's necessary and proper. You've got a very real question around what's necessary or proper. Who makes that determination? Certainly, in terms of the issues that were raised, the potential is there for the use of the act to be done in the ways as presented to the committee.

1110

**Mr Hope:** When we're dealing with this issue, you're saying accountability and I really want to focus on that. Wouldn't the accountability aspect be to the administrator of the program, not necessarily the municipal elected officials as far as accountability being there is concerned and making sure that system is working, and if it's not working, to make the correctives? I know she highlighted a number of areas in the report which I know the government is already pursuing to clean up communicating with Quebec, with the federal government on CPP. The Provincial Auditor indicated that, which was going on by previous governments. They wanted us to clean it up, and I know Charles Pascal made a presentation to that.

When we get to the issue of actually who should be making sure that the system is accountable, and when I read the legislation in British Columbia under subsection 22(3), which talks about the privacy of the individual and invasion and also makes a determination on the social assistance aspects, would it then be appropriate, because I'm looking for direction from you too, to allocate the administrator as the head versus the elected officials as the head?

**Mr Wright:** I'm aware of the suggestion that's been made and I believe it was made back in 1991. It would certainly be a solution, although in essence it would not by any means absolutely eliminate the possibility of access, because there can be information exchanges that would take place from institution to institution through other mechanisms available under the act. I guess it depends on the kind of solution you're really looking for.

It is certainly a solution. What it carries with it, of course, would be all the other obligations that the act would impose on an individual institution. The reporting requirements and all the other things, access requests, various other requirements that would apply then to that individual organization, which may well be no difficulty at all; I just point that out to you.

**Mr Hope:** What I would like to say, in looking at the information, and I guess I'm going to really form this into a direct question, should people be stripped of their rights to privacy? That was a direct comment that was made, saying that they should be stripped of their privacy

rights. I read your report that you gave us, I looked at BC, I listened to you talk this morning and I need to ask that direct question. I know where you're at. You're a pretty good politician in answering the question on that one, but I need to ask you a direct question then: Should individuals be automatically stripped of their rights?

**Mr Wright:** As a matter of making those kinds of choices, the answer I would give you is no.

**Mr Gilles E. Morin (Carleton East):** Mr Wright, two quick questions: You mentioned in your presentation that one significant issue facing the committee is the extension of the access and privacy system to hospitals, universities, social services agencies and professional governing bodies. That means more or less an extension of the bureaucracy. You'll need more people if you have that extension.

**Mr Wright:** That's fair, yes.

**Mr Morin:** Okay, how much?

**Mr Wright:** I recall this question being asked either by, I believe, Mr Tilson, or it was asked the last time by Mr Sterling. We have not as an agency gone into an actual, careful look. I think that would be part of the considerations that the committee would want to take into account.

We certainly have no desire to expand on the size of our office. I think our experience to date makes us more suitable in terms of considering this kind of expansion at this time, because I think we have an understanding of how we do our business and I believe we're doing it in a reasonably efficient way. But, yes, I can certainly answer your question by saying there would be a requirement for more funds. The extent of that, I don't know.

What we're going to see—and I believe I mentioned this again at the last appearance. The province of Quebec has extended data protection or privacy legislation to the entire private sector. Their access and privacy commission has had its jurisdiction expanded as a result of that step. We're certainly going to see that as an example of what kind of administrative costs, certainly as they relate to the commission, are likely to be incurred. I've spoken to the commissioner on a number of occasions and I know indeed they are hiring, as you can well imagine, more staff. The extent of that hiring he doesn't know yet.

**Mr Morin:** We have another government body, an extension of the Legislature, called the Ombudsman. The Ombudsman Act is very clear. It prevents the Ombudsman from investigating cases outside of governmental organizations. It's strictly governmental organizations. It cannot touch municipalities, decisions of the courts, hospitals etc.

If we were to give you that extension on these bodies, would it give the Ombudsman solid ground to say, "Look, you've given it to the privacy commissioner, therefore the Ombudsman should have it"? That's the problem. That's the concern I have: Then we would create, again, a larger bureaucracy.

**Mr Wright:** I have to confess I hadn't thought about that kind of impact that it might have on someone like the Ombudsman's office. I'm not sure what has been proposed at this point.



**Mr Morin:** You see, she's asked for it.

**Mr Wright:** Fair enough. I wasn't aware that she has done that. I know certainly, as far as the ombudsman in other provinces, it extends beyond what Ontario's coverage is, at least to the municipal level. Whether the committee's decision in this context would affect it, I can see the connection that you're making.

**Mr Elston:** If I might—

**The Vice-Chair:** Well, I'm—

**Mr Elston:** We didn't run out of time.

**The Vice-Chair:** Yes. I'm being very flexible today.

**Mr Sterling:** They've been very brief on their first question. Why don't you give Murray the next question?

**The Vice-Chair:** All right.

**Mr Elston:** I want to go back actually to the question I asked another presenter last week, which was, seeing that if we accept the suggestion and if the minister follows through on his suggestion that we reveal the wages paid to every employee of a municipality, school board etc, with their expense allowances and otherwise, can you tell me what the rationale is then for not revealing all amounts of money paid to all people by taxpayers dollars; ie, if you pay a person to work, shouldn't you also reveal the people who are paid when they're not employed, ie, welfare?

I want to know, because when we're going to sit to draft this issue, if I'm going to say, "X is a clerk-typist and earns \$17,900 in Walkerton, and by the way, Y doesn't work, but you can't figure out how much I pay them," how do I explain that to individuals who are worried about taxes? What's the rationale for saying, "Yes, I revealed one because those are taxpayers' dollars, but the second I can't tell you because those are also taxpayers' dollars, but you don't need to know"?

**Mr Wright:** I see them as being quite different.

**Mr Elston:** Well, that's what I'm asking. That's the question, Tom.

**Mr Wright:** Certainly as far as the salaries of employees, I look at it once again as the public-at-large being the employer and in fact, as a result of that, having a right to know the amount of money being paid to one of its employees, at whatever level it happens to be and whatever government agency is affected.

I think the issue of benefits, although obviously there's an expenditure of public funds, is really something in which we are getting into a situation where the legislation already recognizes, in the form of the type of personal information that is entitled to protection, it recognizes it in the personal information exemption, that for individuals who are in receipt of social assistance, there is a presumed unjustified invasion of privacy to disclose that kind of information.

I see it as a value in terms of the privacy of those who are in difficult circumstances, who are, through no fault of their own, required to take advantage of or benefit from a type of government program, and there is a right, it's a basic human right, in terms of their privacy.

So I guess the balance, Mr Elston, in terms of those situations, which I freely admit is in place in both cases,

as weighing in favour of disclosure obviously in one and seeing that the privacy interests—

**Mr Elston:** But I still don't understand why. If I go to work every day and I'm paid to be at work, you're going to tell the whole world that I'm going to be paid \$20,000. No matter what I do, no matter what I say, everybody knows that when I get in my car I'm going down there to get a cheque which will work out to be \$20,000 a year or \$60,000 or \$100,000. But if I don't go anywhere during the day there isn't anybody who can figure out exactly what I'm paid even though those are my taxpayers' dollars.

1120

I don't find you've given me a distinction at all. Both are paid taxpayer dollars, full up front. You see, the arguments which favour one, it seems to me, have to be applied to the other. If you can find out what the gross numbers are for everybody who's receiving social assistance, that's one number; if you know what the gross figures are for all the employees, then isn't that a balance? Basically what you're saying is that if I work, you have the right to know what I'm being paid, but if I don't work then there is no right to know what I am being paid for not working.

You see, I haven't found the distinction that satisfies me that I can put my hands on the wording which we could recommend in relation to the differentiation in the act and how I could be—I go home, for instance, and people say on the street, "Well, there's so-and-so and worked hard all their lives, and you people are going to say everybody should figure out how hard they've worked to get what they're getting in their paycheque. Now, there's somebody else over there and you know something? Nobody knows how much they're making and they haven't gone to work a day in their lives."

That sort of anecdotal problem for me as a political representative is hard to deal with. I want to know how we are going to make sure that we have the right balance to explain why the persons who work get exposed, in terms of their entire pay, and the persons who do not work don't get exposed.

**Mr Wright:** In trying to follow it I can't do any better than to say, at least for me, I think you have to accept certain other things as they relate to the person who's in receipt of some form of social assistance, as part of the rationale that you would use. Whether or not members of the public would accept that's a reasonable rationale, clearly this committee is going to address those very kinds of issues.

When Mr Hope was here he raised the point around the question of municipal councillors having the right to have access to information about persons in receipt of assistance. I think it's a very similar issue if you accept the fact that if public funds are being expended, who other than the local elected representative should be able to go in? I think the committee has heard some very real arguments as to why others feel that should not be the case. I think many of those flow into the rationale around the kinds of distinctions that you're trying to justify and I agree that the premise—



**Mr Elston:** Actually, I'm trying to find the distinction so that I can work on it, because if we don't know what we're trying to find in terms of balance, then we can't do a good, credible job in making sure that the information that's needed is available.

There are a couple of other areas I want to follow but certainly one I want to get at: Would you say generally, with the exception perhaps of the issue of personnel matters where committees or councils or committees of council or school boards, whatever, go into discussing matters of discipline or a whole series of personnel items, that the public should have every piece of information that councillors or trustees themselves would ask for and receive from their clerks or administrators or whatever so that they can basically make the same judgement or have the same information available to make a judgement on the same issues? Would you say that should be the test for the openness of our government?

**Mr Wright:** At this point in time we're talking about what I think is the other extreme, in particular in the case of the use of in camera meetings—

**Mr Elston:** I understand that, Tom. I know that's where we are at, but would you say the test that I've given is the one that should be delivered for your, I think, sixth point, which is that routinely people should get everything they need or should get good access to information?

**Mr Wright:** I think actually the most difficult question to ask, and other jurisdictions have addressed it, is this question of whether or not council members and others should actually be covered by the legislation. I think the first thing that the committee might well want to consider is that point: whether or not the records that an individual council member has come within the custody or control of the particular institution. I think that is a very difficult question. As in all of these questions, there is clearly the balance on both sides in terms of the public interest. It's the first time I've been asked to consider the kind of approach that you're suggesting and I'm not clear on the answer I would provide to that. I would like to have an opportunity to give it a little more thought. My instinctive reaction would be to say yes, that would foster openness, and therefore what could I say other than, gee, that would be a good idea? But, once again, I am uncomfortable with taking leaps when I haven't really given full consideration to the competing interests at stake.

**Mr Sterling:** Thank you very much, Mr Wright, for coming back. Quite frankly, I'm glad we have had someone here to monitor the briefs and in some ways you're responding—this may sound a little partisan—in a more responsible fashion than we've seen in the minister's response to public hearings. I wish ministers would follow your example. I think that's true not only of this government but the previous two governments.

Notwithstanding that, the question I have to you vis-à-vis the suggestion that hospitals, professional governing bodies, social agencies and universities be included in this legislation is, how aware are those institutions of this possibility? In other words, if this committee decides to go that route, or partially along that

route, are they aware of this? I don't think we can spring it on them without having proper consultation with them.

**Mr Wright:** I certainly agree with you. Our purpose in raising it was simply to hope the committee would consider it, and I would agree with you that the committee would want to hear from all those types of organizations to get a better sense of the kind of impact and some of the concerns certainly that Mr Morin has raised around costs. I think the committee would want to hear that and engage in some form of consultation process before any steps were taken. I agree with you.

**Mr Sterling:** Okay. I'm not asking you to agree with me on the consultation; I'm saying, in your knowledge of any of these, are they aware that this may happen to them?

**Mr Wright:** The only one I can speak for, as a result of a telephone conversation I had last week, is that the Council of Ontario Universities is aware of the proposal we have made. I know that as a matter of a telephone conversation I had following my appearance last Tuesday.

**Mr Sterling:** Can I speak specifically about hospitals, because I can never forget the brief that the OHA gave to the last committee when we were considering this act in 1990, or whenever we brought in the municipal act. They came in to this committee. I don't know how many members here were members of the committee, as I was, at that particular time. I just don't see anyone else in the room who I can recall was there, but I don't know for sure. When they gave their brief to this committee, they were pleading with this committee not to include them. When they walked out of this committee, everybody in the committee thought they should be included, even though they weren't. Therefore, I think the suggestion is good.

One of the problems we face, I think, in terms of time is that it's my desire to include at least part of hospitals under this legislation. If we go for the whole ball of wax, so to speak—that is, we include health care information and access to health care information in this legislation—I don't think that is a short-term project for any government. In fact, the Krever commission, going back to the late 1970s, that dealt with this issue has not been acted upon by any one of the three governments that have had the reins of power during that period of time over the past 13 years.

In terms of handling this issue in a reasonable fashion over, let's say, a year period, because that's the length of the remainder of this government's mandate, how far do you think we can go? We are given several options by our researcher as to what we can do. Is there some way we can formulate legislation in this area but exclude clinical records?

**Mr Wright:** Certainly. As it stands now, the legislation does exclude clinical records, and the reason it does that, at least my understanding, is that the Mental Health Act provides another access mechanism for individuals who would want access to their own clinical records. I wouldn't see that as a major impediment as far as moving in the directions that you've outlined.



**Mr Sterling:** Maybe if you could read over our researcher's paper and if you could perhaps provide us with some kind of guides as to how we don't become snarled in that debate, because if we have hearings on it, it is certainly not my desire—I don't know what the committee would feel—to get into the debate of patient records and access to patient records at this time. I think that's a valid debate, but perhaps for another day.

**Mr Wright:** If I may, just again by way of example of how you might do that, and I have not seen the paper as yet, there are jurisdictions in which, for example, it's a classic situation that courts are not covered by freedom of information legislation, issues around independence of the judiciary etc. But there are cases where what has been done is that the administrative mechanism associated with the court is in fact covered, no issue about the judiciary being covered, but the actual operations of that particular branch is covered by the act, and perhaps that's one of those possibilities.

**Mr Sterling:** I guess the other area of concern in terms of your suggestion were the social agencies and how practical it is to do that. Is it done in British Columbia, for instance?

**Mr Wright:** It is. Yes.

**Mr Sterling:** How do they deal with the privacy issue, the issue of minors and that kind of thing?

**Mr Wright:** I've followed the development of the British Columbia legislation very carefully. In fact, our office was consulted throughout in terms of the direction it was heading. Notwithstanding the very extensive coverage of the legislation, if you compare Ontario's present legislation with the British Columbia act, and notwithstanding the extra coverage, there's not a lot of difference in terms of having to introduce special rules. I think it provides, and I've said this publicly, an excellent model for Ontario to look at in terms of the changes. My own view is that the changes could be made without a significant reworking of the existing legislation.

**Mr Sterling:** Can I ask you another question relating to the disclosure of actual salaries, because I find this issue somewhat amusing in a way almost. When you go back prior to 1985, everyone who earned \$40,000 or more in the provincial public service had their salary published in a book. When the Liberals came in in 1985, they started the salary range stuff, and so nobody could tell what anybody was earning. The ranges were so wide that in effect what they did was cut off that information. That has remained intact today in terms of the present government.

Is there some benefit? I think Mr Elston pointed to it. I think there is some benefit in terms of the lower range of salary in giving them some kind of protection. I think it's as important for the "working poor" to have that protection as it is for somebody on some kind of social assistance.

**Mr Wright:** Again, thinking about both your question and Mr Elston's question, I would personally have no objection to the idea of a floor, if you will, at which ranges would be what's available, and above that it would be actual salary. I think, Mr Sterling, the point you make

around the extent of the ranges has been a very real concern for us, because if you have ranges, say, of \$30,000, I don't think it really tells you a great deal about what the salary of the individual is. Particularly when you're in a range that high, chances are the salary will be at a much higher level. The idea of balancing again the interests at play—I don't disagree with that.

**Mr Sterling:** One of the concerns I do know of, of posting the salary of an individual, particularly in heated economic times, was the problem of raiding by the private sector of your most competent technical people. For instance, if you have a computer person who was extremely skilled in the late 1980s about computer programming, or an analyst was extremely good, I think the government to some degree had some legitimate argument in saying, "Well, we don't want to tell private industry that we're paying this individual \$80,000 a year because we know that he could get \$120,000 if he went out in the private sector."

Have you ever considered in your thoughts any kind of limited disclosure? I know, for instance, in the Parliament of West Germany, now Germany, that there are confidentiality provisions within the Legislature. For instance, a legislative committee will be given confidential information and they're expected to respect that confidence in terms of what they're doing. Have you ever explored that end?

**Mr Wright:** I think we have a good example recently with some of the articles you've seen around the effect of the disclosure of the salaries of some of the bank presidents. I remember seeing the range of those salaries, being obviously totally astounded, I must confess, at some of the salaries that are being paid.

**Mr Jim Wiseman (Durham West):** On the backs of shutting down small business, mind you—

**Mr Wright:** Notwithstanding that, the fact is that the very point you make was raised, that one of the bank presidents, I believe it was the Bank of Nova Scotia, seemed to be grossly underpaid compared to others.

**Mr Wiseman:** Or the others were grossly overpaid.

**Mr Wright:** The fact was that there was a suggestion that once this kind of disclosure was going to take place throughout the top five in the executive level, it would open up this kind of raiding. I've read commentaries that suggest that that information is known in any event. It's already out there. There's no issue around making it worse in terms of the potential for raiding and in many ways the employee is going to know. If they're a very competent, let's say, programmer or someone involved with the development of software, they're going to know what the private sector is paying and they will seek out those opportunities on their own, as opposed to the thought that a headhunting firm of some kind would make an access request under the legislation in order to obtain information to come and try to entice the person away.

**Mr Sterling:** That was a suggestion that was put forward to us by several municipalities: the right of giving to municipal councillors what MPPs have in terms of rights to individuals' private information; that is, if I



get a written authority from a constituent to look into workers' compensation or whatever the particular matter should be, I can do that. Have you heard any constituents complaining about MPPs misusing files, or do you want to comment on whether or not we should grant this right of representation to municipal councillors?

**Mr Wright:** It's an interesting point and I noticed that it was raised in a couple of submissions. To be quite honest with you, I don't understand why it's being raised as an issue. In fact, it's not necessary that there be this particular kind of identification in the legislation. It's not necessary that MPPs be identified as a separate category in the legislation. The key feature, and this is the point I would like to make, is: There has to be the consent.

Someone can give me their consent to get their personal information and my name doesn't have to be listed in the section of the act, so I think the key feature is consent. I personally don't feel it would be necessary to do anything by way of amendments to respond to that kind of comment. It wouldn't be necessary.

1140

**Mr Sterling:** I guess the only thing is, by putting it in the act, then you make it clear that it can be done.

**Mr Wright:** Sure.

**Mr Sterling:** One of the problems with freedom of information legislation is that it's supposed to be understood by everyone, and therefore sometimes you have to say things which may be pretty obvious.

**Mr Wright:** That's fair. It would certainly clarify it.

**Mr Hayes:** Mr Wright, I want to touch very briefly on the comments by the councillor from Thunder Bay that welfare recipient should be automatically stripped of all privacy rights. We have had people make presentations here talking about local politicians following welfare recipients around the grocery stores, for example, and looking in the cart and making comments that people on welfare should not be eating that kind of food.

Then we have also had situations where a couple who was ready to retire, for example, and needed assistance for a very short period of time but they didn't apply, basically because the politicians in their local community would be aware of this and they were afraid of actually the harassment or being embarrassed in public.

What can you do as the commissioner or what suggestions can you make to this committee that we can assure that local politicians do not delve into individuals' privacy and be able to get information on people, knowing who was on social assistance and knowing all of their financial or personal business?

**Mr Wright:** I should warn the committee that not only am I commissioner, I'm also a lawyer, so I'm going to give you a legal answer in terms of offering you the ultimate solution. Again, you're asking my opinion and I'm quite prepared to offer it.

The answer would be to exclude from the application of the act the records relating to persons who have been or are in receipt of social assistance. Just make an absolute prohibition against access. If you want direct language that would accomplish the ends that you're referring to, Mr Hayes, I think that would be the solution.

I also think the solutions that have been presented to the committee around the institution etc are also workable solutions in the kind of direction that you're referring to, but I think the decision has to be made, what is it that the committee would like to have happen?

**Mr Hayes:** Okay. You refer to the public at large actually being the employer in your report. What I'd really like to know is, what should the government do when it is pressured by the employer to step up the invasion of privacy? Specifically, we talk about pushing the government towards more record linkages. You also discuss that in your report.

**Mr Wright:** I can certainly see today where, as you say, the government is under pressure to be more efficient and spend money wisely. We get involved in a number of these issues, as you mentioned, record linkages, things of this nature, which we feel are in and of themselves not something that shouldn't go on. What we're looking for and what we're asking all the organizations that are implementing these kinds of practices is to factor in the privacy interest, so we have this balance so that it's not to the exclusion of one interest or the other.

I think data matching is another good example. There are many questions that need to be asked before data matching is the solution chosen, and one of them is, what's it going to do for you? I think very often today we're seeing technology being used, and I take that word and use it very deliberately, as a solution to a problem when it's not, but it has a nice ring to it, it's modern, it's current. Today, all we hear when we open the paper is the information superhighway etc. We're getting quite a sell job on that, all in terms of moving in a particular direction.

What our commission tries to do is to have these organizations look at what it is they're going to try to achieve, will it be achieved, and in doing so, how can the privacy interests be factored into the end product. I think that's something that's quite possible. There are very few things that simply can't be done because of privacy concerns, but there always will be the need for balance.

**Mr Hayes:** Let's say I was enrolled in some ministry program, possibly a grant program or loans or whatever the case may be, and I felt there was a discrepancy there, information that I needed to know on how to deal with something down the line, and that would be in my own personal file. There have been people over the years who have had problems getting their own personal files. What rationale do ministries or governments have to refuse someone when it's their personal file? I would feel that is my information and I have a right to that. How do we get around those kinds of situations—without getting into a long, drawn-out thing, and I don't mean you're drawing it out; I mean the ministry or the individual.

**Mr Wright:** The reason the problem exists is that the act as it presently reads, even when it is your own personal information that you're asking for, says that various exemptions, reasons for not disclosing the information, are still available. It's advice or recommendations of government. Law enforcement is probably the single most frequently used exemption when you're talking about personal information. I think that's under-



standable. A lot of requests relate to people who have come in contact with various law enforcement agencies. They will be told they can't have the information the law enforcement agency has collected because it might for example interfere with a law enforcement investigation or something of that nature.

We're into a situation where you would have to either eliminate or reduce the number of exemptions that would apply in cases where you're asking for your own personal information. I think there are some difficult calls to be made, and again I use law enforcement as an example, as far as how you would actually go about doing that. Yes, people do at times have trouble. Many of our appeals involve requests for their own information.

**Mr Wiseman:** It seems to me from what I've heard from school boards and municipalities that they go about it the wrong way. What they're saying is, "If you want the information, you ask specifically for the information that you want." In my years as a community activist, that was probably the most annoying thing for me that I was able to experience, when it seemed to me that what I was asking for should be common knowledge. Wouldn't they save themselves a lot of aggravation, time, effort and money if, when they were putting the information on their computer discs or whatever, they were able to classify the information and say, "All of this is public information," and when somebody comes to ask for it: "Here, you can do the research in our reading room. If you don't find what you're looking for in this, then you can file a freedom of information request, but here it is by title, by date, by everything," and allow them a greater degree of access than running people through hoops on information and making up reasons for not giving it to them?

I have one on my desk now that doesn't make any sense at all to me. Why didn't they just give the information?

**Mr Wright:** It's an excellent question in terms of the why. Certainly in response to your proposal, the Utopia of freedom of information would be the kind of attitude that you suggest. In fairness, I visited the city of Thunder Bay last year. They're going through an entire review of all their record holdings and they're trying to do exactly what you've just outlined, to identify the kinds and categories of records that they have and also at the same time to identify whether or not it's going to be disclosable in terms of freedom of information legislation.

So there are some. And it's not only Thunder Bay doing this; there are others who are making this kind of effort. It's going to take a long time, because I think we have to get back to the point that there has to be the will to do it in the first place. There has to be a desire to share this information with the public. I think we're not there yet.

1150

**Mr Wiseman:** Can't that kind of disclosure of information or approach to information—is it possible to build it into either the preamble of the legislation or some part of the legislation where it says that the onus of responsibility now goes to the municipality, the school boards or the hospitals to say why they will not disclose

the information, as opposed to the person applying saying, "I need this specific piece of information"? Just flip it on its head as opposed to what happens now.

**Mr Wright:** Actually, it's not a matter of flipping. What you've described is actually the system we have now. The onus—

**Mr Wiseman:** That's not the way it works in practicality, though.

**Mr Wright:** In some cases that's true. But in fairness, certainly as far as how our commission approaches claims for reasons for not disclosing the record, there's no question, and as the act says, the onus of showing that an exemption applies rests with the institution. In fact, there are various sections that talk about obligations of the institutions to assist individuals who are making requests. So I think the act itself has captured the right spirit, and certainly in the language of the act it's out there. The question is how that language is actually put into practice, where I think we continue to have in some cases some difficulties, as you've described.

**Mr Wiseman:** My second area of interest has to do with this idea of the right to know and what I consider to be now the blurring of private versus public information.

Just to give you an example, everybody in the province of Ontario receives health care at the expense of the health care system and therefore has an interest in what is happening within the health care system, and there is a blurring between sectors. For example, the private sector companies pay employer health tax. I don't know if you're aware of this and I don't know how many other people are, but there is a tax gap in terms of who pays. There are actually families and groups of people out there who are not covered or not being paid through any kind of employer health tax and, other than through perhaps their income tax, aren't paying any kind of employer health tax on their income. In fact, the number is somewhere in the neighbourhood of 200,000 people who are actually on payrolls not paying employer health tax. There is a significant loophole in the system.

I guess my question is, if I understood correctly what you're saying about Quebec, that they've expanded freedom of information to the private sector, where do we draw the lines in terms of accessing that kind of information? If you're an individual and you work in a company and you're making \$50,000, \$60,000 or \$70,000 a year and that company is paying no employer health tax on you and you have a whole other batch of mechanisms to hide your income, doesn't the public have a right to know about that type of individual—not necessarily their name, but to be able to access what those numbers are and how they're able to do that?

**Mr Wright:** Again, in case I've in any way misinformed the committee, the Quebec legislation is purely the data protection side of things. It does not cover a broader access to information about a company; for example, policies the company has etc. It's solely related to personal information that private sector companies have and what they do with it. That's the whole thrust of the Quebec legislation.

In terms of the specific examples, again, I think there



are in the provisions of the present act special protections in place for companies as relates to tax information and disclosure of anything related to tax information. I think as well that there are about either eight or 10 confidentiality provisions, all related to tax information, that override the Freedom of Information and Protection of Privacy Act. That's a decision that was made and the legislation, when amendments were made, brought that into existence.

Whether or not someone should have access to it, my concern would be related mostly to the identifiable individual and the thought that person X didn't do this. As an aggregate, I see no real difficulty in terms of that information being available but I'm basically working with the act as it presently stands, and there are some very real protections, I think based on traditions around tax information and the confidentiality certainly at Revenue Canada as well as our Ministry of Revenue, that they want to offer to taxpayers basically to ensure that they feel comfortable with providing as much information as they can in order to collect the taxes that exist.

**Mr Wiseman:** The reason I raise this is that the Auditor General found that in the three-year period 1986 to 1989, tax evaders were treated less severely than the transgressors convicted of similar frauds. We're looking at, in terms of absolute numbers on this kind of tax evasion and avoidance of taxes, somewhere in the neighbourhood of \$1.2 billion, which I think far outstrips the 1.7%—

**Mr Hayes:** Corporate welfare.

**Mr Wiseman:** —that people are using as an excuse to invade the privacy of people who are in unfortunate circumstances to find themselves on welfare. I find that when you compare these kinds of numbers, and in the discussion that we're having here about the right to privacy, if there's an argument to have an invasion of the privacy of welfare, then there's a really overwhelming right for those corporate evaders and high-income earners to have their rights included in this act.

**Mr Wright:** I have no response.

**The Vice-Chair:** Mr McClelland, do you have a question?

**Mr Carman McClelland (Brampton North):** I'll defer to Mr Elston.

**Mr Elston:** Thank you very much. A couple of questions. Tom, if we are actually moving to display the salaries of individuals, how do we come to grips with the issues around those people who may be involved in domestic violence, for instance, and really don't want their whereabouts or their workplace identified on the public record? How do we deal with circumstances where the divulging of the salary and the printing of the name could violate that privacy? Could you give me some hint as to what we might do with that?

**Mr Wright:** At this point in time the legislation that we have now, without any amendments, as far as salary, already requires that certain information of government employees be made available. So the salary amendment would really make no change in any sense to the status quo.

Right now, people are entitled to know that someone is employed, what their job responsibilities are. There's a section, I believe it's subsection 14(4) of the legislation, which already permits that kind of disclosure and says in essence it's not an unjustified invasion to disclose it.

Your point is well made. It's simply the fact that absent the application of other exemptions—and it may be that health or safety is another exemption that could be available, in which case I think that would address the kind of specific concern that you raise.

**Mr Elston:** What about the issue of the way municipalities and other institutions are responding to FOI? Have you noted any developments of processes or other barriers to take care of the freedom of information act for those people who don't want to release information on a regular basis? Is there one sort of barrier that's more popular with some organizations than others? Are there types of problems which they put in the place of requesters that you see that we should be taking special note of to make sure that we express in our recommendations that this is the way of the world and that you ought not to be courageously going where no other institution has gone before?

**Mr Wright:** Is that Star Trek?

**Mr Elston:** I saw a rerun last week. In fact, that's all you can see, isn't it?

1200

**Mr Wright:** I wouldn't point to one specific example that would apply across the board. You've heard, I know, from various people on both sides of the question on fees, but as far as anything specific, no, I think it really is very much dependent on the approach taken by the individual organization to what it sees as its obligations. Some are better than others and I don't think that's an unusual thing. Any kind of business you're in, some organizations deal with things better than others. I don't think there's anything that I would suggest by way of focusing on particular problems, other than some of the things we've talked about already such as the ignoring of a request so that the person is in a deemed refusal.

We've talked about perhaps providing the commissioner in an appeal, because that's the route it will then take, an ability to, for example, say fees cannot be charged by the institution under those circumstances because very often we're going to mediate that kind of appeal and the end result is the person will receive the information, although later than they might otherwise have expected. That kind of thing I think might provide an additional incentive to that kind of concern, but other than that, we're talking about a lot of it's good faith, and—it's trite but I'll say it—I don't think you can legislate good faith.

**Mr Elston:** The reason I ask is I just recalled hearing from an individual who had been with, I think, a business magazine or something—

**Mr Hope:** Business Times out of St Catharines, St Thomas.

**Mr Elston:** Out of St Thomas—had mentioned that he was surprised to find that there were detailed notes taken of in camera meetings and he was able to get those. I was

just wondering whether or not people now, as a matter of course, don't bother keeping a record of that type of thing or if they ignore what their practice previously might have been and in fact just have no records at all and whether or not we—I don't know how we deal with that but I was wondering if that might be a strategy that some might adopt.

**Mr Wright:** It's certainly possible, and I think that's one of the concerns in every jurisdiction in which freedom of information legislation has been introduced, that we'll no longer have as much material committed to writing. Certainly our experience indicates that there's no lack of volume of material; it simply isn't happening. Whether it might happen in an individual circumstance, certainly it's possible, but I don't see it as an overriding concern as far as practices that are now in place.

**Mr Elston:** My final question is based on the previous presenters who had suggested that there be penalties associated with a poor performance by an institution, raising barriers, for instance, and taking everybody right to the last moment for each step, if that was required or whatever.

First, I guess I should ask you, do you think we need to have a penalty section; to whom would the penalty go; and, at what stages would you apply penalties to the organization that was not complying with the spirit of the law, which is basically to make everything available except, and then we list the exceptions?

**Mr Wright:** My preference would be that the committee not consider the imposition of penalties. I certainly prefer it as a matter of approach, and in a sense it's a bit more of a long-term goal but ultimately I think the results may be better, that we work with organizations that we feel are not properly responding in terms of their obligations under the legislation. We find that with some effort in dealing with them and sharing with them some of our expertise, steps can be taken that improve.

We've also made a recommendation in our submission that we be given an ability to go and review the access procedures of an organization to see if in fact they are properly responding to the kinds of requests that they are receiving. I think that in itself might help as well.

The penalty thing, I think it makes it a little heavy-handed, and it's just a matter of personal preference on that. I prefer the approach that we have tried to take, which is in many ways to get the institution to understand that this is what we prefer and how we prefer to operate, but at the end of the day, the bottom line is the commissioner's office has an order-making power and we can make things happen, which I think is one of the wonderful features of the legislation and does help advance some of these kinds of things.

**Mr Elston:** Are you empowered under the current legislation to print a list of bad performers or to set out a list of reasonable-performing or, sort of, the examples of the way it should be type program? If you had that authority and you're not already doing it, would you do that?

**Mr Wright:** If there was an example of an organization that I felt was simply doing everything it possibly

could to not comply with the legislation, in my next annual report, which I'm required to file each and every year, I would identify that organization, yes. I have not felt the need. I don't feel I'm in any way prohibited from doing so now if I was so inclined. I simply have not felt the need and my staff have not advised me of the need.

Our approach has been to go out and meet—I go out and I meet with deputy ministers and ministers. I meet with others. People in our office go out and meet and we try to sort out what the problems are. We try to put a bit of a human face on our organization so that people don't have this kind of attitude. I much prefer that the last route of action would be the kind of proposal that you make, but it would take a fair bit to get me there.

**Mr Elston:** I only asked that question for the reason that it's pretty clear from some of the presenters that their feeling is that the institutions with which they were dealing were not good performers and that in fact they were causing very serious problems, raising very serious impediments to accessing information which ought to be generally available. I guess the issue becomes whether or not it's the general rule of the operation of that institution or whether it is a case of dug-in heels in an isolated incident. But somehow or other, we should know about it, because if they're trying to do that just with that one isolated incident, it displays really an overriding attitude of lack of respect for freedom of information.

**Mr Wright:** I couldn't do anything other than agree with that.

**Mr Hayes:** Mr Chair, I think there are a fair number of members on the committee who have comments or questions they'd like to ask. I just wondered, with committee support, if we could invite Mr Wright back over this afternoon, if he would be available.

**The Vice-Chair:** Yes, I think we'll have to ask Mr Wright what his schedule would permit.

**Mr Elston:** Can we have your itinerary for the next two weeks?

**The Vice-Chair:** We just find you so interesting, Mr Wright.

**Mr Wiseman:** I think that's an FOI, isn't it?

**Mr Wright:** Let me think quickly in terms of—no, obviously I am an officer of the assembly, among other things, and I would see my response clearly, if it's the committee's wish, that I would certainly make myself available. Whatever I have to rearrange I can certainly go ahead and do so.

**Mr Hayes:** It's a request, so we certainly would appreciate it.

**The Vice-Chair:** We can be flexible with the committee about the time.

**Mr Elston:** We can even sit tonight.

**The Vice-Chair:** No, no.

**Mr Wright:** How thoughtful. I'm in your hands as far as time.

**The Vice-Chair:** I suggest that we come back at 2:30. Would that be satisfactory to everybody?

**Mr Wright:** That's fine.



**Mr Hayes:** Why 2:30? Is there a problem with being back at 2?

**Mr Wright:** No, not at all.

**The Vice-Chair:** Is there a problem with being back at 2? Okay, then.

**Mr Hayes:** Sharon has to leave at 6 o'clock.

**The Vice-Chair:** I don't think it's going to take that long.

**Mr Elston:** The issue of dealing with hospitals, universities and others—we've got our papers generally on the information that we'd asked. What, if anything, are we going to be doing with maybe inviting some of the people from Health or from colleges, for instance, or from the Ontario Hospital Association to at least talk about this? Leave it till after?

**The Vice-Chair:** Yes, why don't we leave it till after.

**Mr Elston:** This afternoon? I'm happy.

**The Vice-Chair:** I'm quite happy to invite some people to come in.

*The committee recessed from 1210 to 1410.*

**The Vice-Chair:** I call the meeting to order. Mr Wright, welcome back.

**Mr Sterling:** One of the things we have to be concerned about at this juncture in our history provincially is that it appears there are going to have be cuts made by governments to some services, wherever they are. It doesn't matter whether it will be our government or another government.

The concern I have is that there will be temptations in future for governments to say, "Freedom of information and privacy is an important issue, but it isn't as important as a hospital bed." Therefore, I'm concerned that we have a lean, mean machine in terms of your office. The public will respect that you have to be lean and mean and everything else has to be lean and mean.

One concern I have is the appeal process and how much it's costing. There are two stages to the appeal, as I understand it. The person appeals, and then there's a mediation attempt. I believe you said 70% of cases lead to a successful conclusion and both parties go away. The second part is to have a formal hearing. Do you operate under the statutory procedures?

**Mr Wright:** No, we don't.

**Mr Sterling:** Could you give us some feeling for the average cost of both parts of that, any ballpark figure in terms of staff time?

**Mr Wright:** I can't. We have not gone into the specifics of trying to cost out what an individual part of an appeal process, be it either mediation or inquiry, would entail as far as office expenditures are concerned. There's no question that ultimately going to the inquiry if mediation is unsuccessful involves more cost. The longer the appeal is in our office and the more we have to do, the more staff time is devoted to it, and as a result the costs are incurred. But no, we have not done the kind of analysis you're suggesting.

**Mr Sterling:** How many appeals were there to the second stage on an annual basis?

**Mr Wright:** My best recollection is that in 1993 there were a little more than 1,200 appeals received, and we closed a little more than 1,400 files in total. Of those, 70% were closed through mediation, and 30%, the balance, would have been closed through order, which is the inquiry stage, the latter part of the process you described. That's the breakdown based on the numbers. I haven't done the quick math on that, but those are the percentages and the numbers that show us where we were in 1993.

**Mr Sterling:** So about 300 went to the inquiry stage?

**Mr Wright:** Approximately. There were, I believe, in the area of 379 orders actually issued, and some orders would involve more than one appeal. If a similar appeal was involved, we might deal with two or three in a particular order. Yes, in that area: Around 400 appeals would be closed in the latter way.

**Mr Sterling:** Do you adjudicate at those? Are you involved in them?

**Mr Wright:** Some. Much fewer than I was about two years ago. The volume has got to the point where if I were involved in every matter, people would wait years to get a decision, and they clearly don't do that.

**Mr Sterling:** Were there any no-shows? In other words, were there situations where people say, "Appeal," but the date comes and they just don't show?

**Mr Wright:** We operate for the most part with what I would call a paper hearing process. We don't schedule what we would see as the classic courtroom hearing approach where everyone has to get there at the same time, so we don't have the problems with no-shows. That was a very conscious decision made by the first commissioner, Sidney Linden, because it was felt, and I share that view, that in many ways the hearing model for administrative tribunals—and I think you'll hear this from other heads of similar agencies—is a very time-consuming and expensive process. We felt that trying the paper approach, where representations are done in writing, is a better approach. This is how our practice has evolved.

**Mr Sterling:** Of course there are costs on the part of the commission, but there are also costs on the part of the government agencies defending their position on the act. Of the 400, how many orders would be made in favour of the appellate and how many in favour of the agency?

**Mr Wright:** I don't have with me a copy of our 1992 annual report, our most recent report, but that number is shown in a chart. My only recollection is relating to the provincial organizations. The decision of the agency was upheld in around 38% to 40% of the cases. In the other cases, it was either partially upheld or not upheld at all. That's the kind of breakdown. It's in the annual report, and if I had it I would refer to it more specifically, but that's my recollection.

**Mr Sterling:** The reason for all these questions is that I am wondering whether there should be a \$5 fee. We talked about an application fee, particularly at the municipal level, for information. We had evidence here that the federal government charges \$5. I support that to some degree, particularly in view of the fact that there have been some abuses by people. With this two-hour free



search, people learn ways to get around the intent of the legislation, and therefore you've got to seek a way to plug it and get back to the intent. I don't find \$5 excessive for anybody who wants information. I'd be quite willing to give some kind of discretion to the commissioner to waive application fees if the proponent or applicant could prove they were unable to pay, if they wanted to make some kind of thing like that.

I'm wondering whether we should also think about application fees for the inquiry stage. I'm not so concerned about the application for something where mediation is taking place, but I wonder whether there should be a \$25 fee or something for an inquiry. I don't know what this process is costing. How many people are involved in the inquiry process? It varies?

**Mr Wright:** It's difficult in terms of the inquiry process, because we process so many appeals at the same time. The case load of the commission at this point is around 400 at any one time. There is one appeals officer involved with a file. When it goes on to the adjudication, there is a person we call an inquiry officer who ultimately makes the decision and writes the decision at the end of the day. In pure numbers, that's who is involved with the actual inquiry.

If your question relates to the application fee, my initial reaction would be that anything that would be seen in any sense as a barrier to access to information or could be used as a barrier is something I simply would not see as a direction in which to go.

I would also add that if the committee was of the view that it wanted to have an application fee along the lines you describe of \$5, I suggest the last thing the committee would want to do is to have that sort of thing appealable to the commission; otherwise, we would be spending the kinds of resources you're talking about to determine whether \$5 is appropriate. There's no way I would justify that as a responsible expenditure of public money.

1420

**Mr Sterling:** I agree with you. It was just a thought. From an inquiry standpoint, I'm not as much concerned about your expenses for running an inquiry as I am about a municipality having to hire a lawyer and put together a defence of a situation when there's no risk on the other party. For instance, if there's a serious challenge to privacy by somebody trying to get a record and they take it to the inquiry stage, a municipality or an agency, I don't care which, if it is a very sensitive record an individual's after, cannot afford to be cavalier about its defence. They have to say, "This person wants somebody's hospital records or medical records or personnel records, and we can't afford to treat this flippantly." They hire a lawyer or whatever to defend and they're into \$2,000 or \$3,000 or \$4,000, whereas the person who is taking it to that stage may be just mischievous, I don't know.

**Mr Wright:** It's possible, as you say, that the person could be being mischievous. We have a group called an innovation team, and we're working with a select number of both provincial and municipal organizations specifically, and we're trying out new procedures in appeals with some of the concerns you raise in mind. You're

right, the money being spent to defend appeals etc is money that can clearly be spent in other ways. We certainly want to do whatever we feel is possible, with the cooperation of these groups, and we're working with them to try to streamline the process. I think we've made some fairly substantial improvements to achieve those kinds of goals. Certainly we give careful consideration to whatever is suggested to us and have implemented many of those changes.

But you can't get around the point you make, that yes, as far as the appeal process is concerned, it is very much weighted in favour of the appellant, the person who has been denied access to the information, and that's the design under which the whole act is based.

**Mr Sterling:** Have you had many appeals go to the inquiry stage where you've clearly made an order before on a particular section? In other words, you've determined that section 23 of the act clearly means such and such, and you've had somebody ask about a parallel or almost parallel case, yet the individual insists on going to an inquiry. Have you had that experience?

**Mr Wright:** We have. I'd like to share with you an example of that very type of request. One of the more popular requests being made will be from a person against whom a complaint has been made to a municipality, and this is largely restricted to the municipal level: a property standards bylaw or something like that. Suddenly the property standards officer arrives at the door and says: "I've had a complaint. I want to see if you have the proper..." let's say a sprinkler system or something. They do their inspection, and there may or may not be an offence contrary to the bylaw.

The person who owns the home that's been inspected has an interest in finding out who made the complaint. Our office has dealt with a number of those complaints and we have uniformly said that based on the procedures in place, the source of that information is confidential and should not be disclosed.

What we do with people who continue to make those kinds of requests and appeals is make them aware, first of all, of the existing orders. Then we do a very what I'll call fast-track appeal process. We clearly tell the person: "Here are the orders. You explain to us why your circumstances are such that the orders that have been issued and the result won't apply." The orders we issue are very brief. But we don't have a mechanism, for example—at least in my opinion we don't—to tell the person "We're not going to go any further with your appeal." What we feel we've been able to do, though, is to make it as streamlined as possible, and the point is made to this person that it is their job to show why a decision will be different from a number of other cases.

That kind of approach we have taken, and there are other examples where we do the same thing. That's why we end up with as many settlements as we do. For us, the independence of the office is the essence of whether it will work. The public has to trust us simply because they never see the records when they've been denied access. Our office does. We will tell people that we have reviewed the records. The exemption claimed may be solicitor-client privilege. We will say to them: "What we



have in front of us is a memo from a lawyer to person X. It looks as if that would fall under the exemption. Ultimately, you have the right to go to inquiry, but based on past experience, chances are you're not going to get it." People do resolve appeals in that fashion.

**Mr Sterling:** I worry about this as we consider expanding the act, because we have approximately 840 municipalities in this province. An appeal of the nature you're talking about may be quite familiar to the larger municipalities because they've experienced it a dozen times now, but it may be the first time for, say, the township of Rideau, one of the townships I represent, which has 11,000 or 12,000 people in it. Is it your experience that they're still hiring lawyers to defend this kind of case?

**Mr Wright:** The way the act has developed has been interesting. I must admit one of my concerns was that as things got on we would be inundated by lawyers. Certainly some lawyers are involved—mainly on the part of institutions, as you're suggesting; relatively few as far as appellants are concerned—but it's not an overly large number. I think part of the reason is that there are a number of things our office does. For example, we provide to all organizations something we call a *précis*, a brief summary of an order that's been issued which has key words in it. People have that available to them.

Also, during the course of the appeal the person who is involved, the appeals officer, will provide assistance. We're not in any sense an organization that falls on one side or the other of the appeal. Our job is to process the appeal. We make them aware of orders. We make the municipalities, of all sizes, aware of the orders that have been issued which we feel are relevant and we'll provide copies to them in the context of appeals.

You're right. I've received letters from small municipalities saying how difficult it is for them to keep current, and it is. We try to in some way address those kinds of concerns, but you're correct: It is a difficult thing for them to do.

**Mr Sterling:** Do you think a \$25 application fee, either at stage 1 or stage 2 of the appeal process, would alleviate some of the work?

**Mr Wright:** On balance, I would see the imposition of any fee at that stage as acting as a deterrent, and the \$25 that would be recovered, when taken as a global amount, wouldn't be sufficient to move in that direction.

**Mr Tilson:** Following the same line of questioning with respect to costs, we're talking about the possibility, as you are, of expanding to other institutions: hospitals, universities, public organizations. We're talking about perhaps making information more accessible, and I haven't figured out whether that means more work for your office.

I look at the overall cost if we expand to other institutions, the cost not only to the commissioner's office but the cost to the Ministry of Health or whatever it might be. I don't know how all that works out, but right now I don't see anything before the committee, unless you had something in your annual report, which I'll admit I haven't looked at. That's not very good when sitting on

this committee, but however.

The issue is that we should be in a better position to know what these costs are before we embark on the possibility of major expansions, as Mr Sterling was talking about, not only to your office but, if you start getting into perhaps a specific university, the anticipated cost to a university, the specific cost to a hospital. You may not be able to give that, because you don't know what they're going to do.

1430

The only two experiences I've had personally with respect to the provincial act—I haven't had any with the municipal act—is that I was involved in an application with respect to work the Ministry of Transportation was doing. We were successful on that appeal. There was a hearing and I know the Ministry of Transportation had to spend a substantial amount of time justifying what it was doing. More recently, I made an application here under section 57 or whatever it is with respect to the waiver of fees. I was before two people, the hearing officer—I'm not too sure what you call him—and an assistant, and that lasted half a day. That involved the Ministry of Environment. I might add that I lost that one, but such is life. The Ministry of Environment I'm sure spent a good portion of the afternoon on its justification.

You look at all these costs. It seems to me this committee, before we start making recommendations to the Legislature to amend this legislation, should have some idea of where we're going cost-wise, if not from the individual sources of information, for example, a hospital, at the very least your department, the commission; in other words, knowing what it costs now, anticipating what it might cost you in the future not only for mediators but for hearing officers and so on.

**Mr Wright:** We had this same type of difficulty at the time the legislation was extended to the municipalities. At that time we didn't know as an office what it would mean in terms of the resources we would need. We took a very cautious approach, to give us a chance to look at what our experience was after the first year and the kinds of demands that were being generated by municipalities, at which point we went before the Board of Internal Economy with a fairly detailed outline of the costs associated with processing the appeals, as well as what we felt were costs associated with providing varying levels of service, so that the Board of Internal Economy had a chance to consider that.

But I do agree that you need more information on costs. I think another place for you to look, in addition to ourselves as well as these organizations, would be Management Board of Cabinet. They have experience with both the implementation of the provincial legislation as well as the municipal legislation, and that experience vis-à-vis the organizations, be they ministries or other types of boards and commissions, would also be useful for the committee to hear.

I fully support the fact that before this committee make any recommendation that would extend this legislation to these new entities, it have that information in front of it. I couldn't agree more.

**Mr Tilson:** If we were to go in that direction, you would be prepared to provide some sort of cost estimate, at least from your own commission?

**Mr Wright:** Yes, absolutely.

**Mr Tilson:** There's an issue you may or may not be aware of. One of the delegations before us was a councillor from the township of Mariposa, and his concern had to do with the availability of notes made by municipal councillors for their own use during council debates, that that information is available. Mr McNaught has written a report for the committee, and it appears he is correct: Depending on the specific case, that could be the situation. Members of the Legislature, as I understand it, are exempt from that.

**Mr Wright:** That's correct.

**Mr Tilson:** Should the same exemption apply to municipal councillors?

**Mr Wright:** I don't feel I have the ability to make that kind of call, as to whether they should or shouldn't be covered. It is, as it stands now, a very live issue. The best response I have is that if you want certainty, if the committee feels the interest is such that notes of that type should not be covered by the legislation, the committee could very clearly recommend that that be the case. Failing that, we're left with a situation where to a large extent it will be our commission, through appeals that may well come to us, that will be left with the task of wrestling with this question, which is really custody or control. I can tell you, we have looked at this question on many, many occasions. There's been an incredible amount of debate.

What I've learned in terms of our experience with the municipal act as much as anything else is that you would have thought a lot of these issues around councillors and their role, around trustees and their role, around who's an officer of a corporation, would have been resolved in the municipal law world years and years ago. Yet we're finding we're having to address them and come up with answers which we hope will be at least workable, when in fact no one else, including courts, can tell you today with any certainty the relationship around councillors and councils, the relationship around councillors' access to information. The courts have not been able to deal with this in the municipal law context for years.

I feel no more able to resolve these burning issues than others have been in the past. We are doing as we're doing now, and I know there are concerns, and they're appropriate.

**Mr Tilson:** I sat on a municipal council for several terms, as I know other members of this committee have. I didn't even know this law existed. I don't know how a municipal councillor can properly do his or her job if they have this hanging over their head. They're given a document for their own note purposes, yet that document could be made available to the public. Obviously, there are documents made by the clerk for official record purposes, but that someone can go into a councillor's file I find unbelievable.

**Mr Wright:** You've hit on the fundamental question: Is it the councillor's file, or is it a file that belongs in

some fashion to the organization? That's what we, on a case-by-case basis—much of it depends on circumstances—have to resolve.

**Mr Tilson:** Mr McNaught made that clear and I won't pursue it any further, other than that I hope other members of the committee would be prepared to pursue this issue at some point in time, because I find it inexcusable that a councillor can't sit and make notes in his or her file that are private to him or her.

**Ms Sharon Murdock (Sudbury):** In terms of the questions Mr Elston was asking this morning about social assistance privacy matters, would the lists the family benefits office have not be adequate in terms of information release to determine the amount of money a recipient can get? Albeit it's not a named recipient but, say, a recipient with two dependants gets x dollars, would that not be sufficient under FOI?

**Mr Wright:** It was a very difficult question Mr Elston asked and I've thought about it further during lunch. I see that as being the kind of balance you would try to reach, that you would remove the identifiable aspect of it; in other words, you don't attach it to an individual. The level of accountability that the public needs doesn't relate, in my view, so much to the individual as it does to the quantum of benefit that a particular person in a particular set of circumstances might be able to receive. Perhaps that's the kind of balance that would work, and in that sense both the privacy interests, which I feel are extremely important in those circumstances, as well as the public's ability to find out generic information are in fact answered.

**Ms Murdock:** One of the presenters on Thursday made a statement that when she got an answer she didn't like, she would deluge the agency or the institution with more applications for information. It again gets into the frivolous nature of requests.

I know you have made it quite clear today that you disagree with any kind of fee or penalty, but in that instance where it is fairly evident or where a number could be tagged on, would you not agree that there should be some kind of—I don't know whether "penalty" is the right word, but some kind of regulation of that?

1440

**Mr Wright:** I heard some of the earlier presenters this morning, and the issue came up about "frivolous or vexatious." The difficulty I have is that in any legislative scheme it would be possible to point to individual examples of what people would look at as an abuse. I'm not so sure that where that automatically takes us is to provide a mechanism which would apply across the board.

To lapse into legalese, hard cases make bad law. The example you raise is a very good one; I would be hard pressed to suggest that's an appropriate use of the act, and I wouldn't do so. At the same time, is that example, or a couple of others that have been raised, sufficient to blanket every other requester who may ever come forward—we have had thousands across the province already—with this kind of procedure? It's a matter of balance.



**Ms Murdock:** Following the penalty idea, your office has already made a decision on the Metro Toronto Licensing Commission—I believe you did anyway—in terms of taxi drivers trying to get their plates. It was in the paper a couple of weeks ago that in trying to get the plates, part of the information required was information from their income tax forms, and not only did the commission release that information from the income tax, but also names, addresses, social insurance numbers and so on. The decision from your office basically said that should never have happened.

What remedy is there or what could you suggest, should that occur again? If it's already been done once by that particular agency and they should do it again after having been told they shouldn't, what do you do, and how do you balance that need for the information?

**Mr Wright:** In the act now there is a penalty section, an offence section, which talks about the wilful disclosure or wrongful disclosure of personal information, which is an offence which would have to be dealt with in a court. There is something available now.

In the situation you mention, it really highlights our own experience with the act, that we're still at a point where people are learning to deal with the rules around disclosure of information. By and large, what we find is that it's inadvertent. No one's out there with the intention of causing someone else embarrassment or whatever through the release of personal information. The importance of the rules is that it's evident that once the information is out, you can't get it back, you can't make people forget they've seen it, and that's why it's important that it not go out in the first place. At the same time, these situations will occur. If they occur repeatedly, then yes, something more would need to be done. I suppose the most serious form of that would be that someone would go to court and say, "They've committed an offence and we want them fined." The fines are not insignificant under the present legislation.

**Mr Morin:** You were interviewed last Friday by the CBC. It had to do with a smart card in Ottawa. Do you remember that?

**Mr Wright:** Yes, I do. Actually, it was Thursday.

**Mr Morin:** It dealt with the issue of having one smart card that would deal with information for transportation, health and welfare. You objected to that and gave your reasons.

I conducted a survey in my constituency, and 80% or 90% of the people who responded to my request were totally opposed to fraud, not only in my riding but all over Ontario. The perception in the general public, not just in my riding, is that the system is being gypped and people are stealing left and right. We had a witness here who practically called all people on welfare—well, I won't use the word, but it was not charitable.

The public must perceive that there is a system in place. Fraud will always exist and you can never have a perfect system, but if the government were to come to you and say: "Mr Wright, we want your recommendation on what type of system we should have so that privacy and the dignity of the individual are protected but at the

same time we can have real, tough controls so that the public knows the moneys being spent are being spent properly and nobody has access to it as simply as has been proven." Just read the paper today about the case of this lady who gypped the government for \$151,000 over a period of 12 years. What would you recommend? What is the best system you feel should be put in place?

**Mr Wright:** There are a lot of parts to what you've said. Just to make sure I am on the same wavelength, are you talking about the use of smart cards, as they're called, per se, or are you talking about technology as the means by which fraud is ferreted out?

**Mr Morin:** Technology.

**Mr Wright:** Our office has already done a number of things and is working with various organizations on new developments in technology, including the smart card. We prepared a paper which very clearly outlines what we feel are the privacy issues that have to be taken into account. What that paper does not say is that smart cards are something we should not have—not at all. We feel our job, our role as an agency in the privacy area, is to flag, highlight, offer our expertise in these new kinds of emerging technologies, and that's what that paper does.

In the interview I did, I said we do not oppose the introduction of a smart card, but here are a list of things we feel have to be taken into account, have to be provided, when you move to that kind of technology. I have no disagreement at all with what you're saying about the value of the technology. Our concern is, how do you factor in the privacy interests?

I'm pleased to say that organizations are coming to us because they're realizing that technology carries with it the potential for further intrusiveness. That is a very real concern in the eyes of the public today, along with the concerns around efficient expenditure of funds. We don't see privacy as being a barrier to efficiency; that's not our goal. I think the two can coexist, and what we want to happen and hope will happen is that the concerns for privacy will be taken into consideration.

**Mr Morin:** You're saying there must be certain parameters established, that if you do have a smart card make sure this information is not available or, if it is available, that it is in the hands of the person who is responsible.

**Mr Wright:** I'll give you a specific example. Smart card technology would allow you to have literally a person's life history on the back of the card. We raise questions around the kinds of security to be built into the card so that yes, a medical doctor can access the medical information, but he or she should not be able to open up the card, if you will, and have access to every last bit of information on that card.

What we hope governments would do is commit the necessary funds to provide for a more effective, efficient means of providing services, but not to the exclusion of some of the fundamental concerns.

1450

I personally don't want any public servant I happen to come in contact with because I'm using a particular service to know absolutely everything about me, whether



it's my driving record, my health record, my educational record, whatever. I don't want that to happen. It doesn't have to happen. There are ways of controlling it, but one of the fundamental questions that will have to be addressed is, what is the government prepared to spend to institute those kinds of controls? That's the other part of the efficiency issue.

**Mr Hope:** The police brought up about the issue of the press requesting information, that it's like going to the front line and grabbing the information from the officers doing the investigation. I understood what they were saying, that that could possibly jeopardize a case being solved. How do we protect the right or the freedom of the press, whatever you want to call it, to access information but at the same time not jeopardize a possible resolution to a crime?

**Mr Wright:** The press is not treated differently under the legislation from any other requester. I know this has been a source of complaint, that members of the media feel that making a request, with 30 days to respond, simply doesn't meet their time limits in terms of reporting. That's probably fair. One of the former federal information commissioners basically said the freedom of information legislation is not media-friendly. Other than for the person who's doing investigative reporting, it's not something they will use as a vehicle. They will use—this is my understanding—some of their traditional sources of information in an informal way, so I don't see the press as being an unusual example. The kinds of concerns you raise would apply no matter who was making the request, whether the media, the person being investigated, let's say, or anyone else. The concerns will be the same.

**Mr Hope:** You raised smaller municipalities, and that's part of my concern. Some don't even have full-time staff. They've got some full-time top administration, but part-time lower categories. It is a real concern that if we are to expand the role and the mandate, providing more information, first we have to start getting public information out to the general public and then we'd probably eliminate a lot of requests. But I sit and think, how is the smaller municipality going to cope with the act? I know we're trying to get more information to the general public, but with the financial resources in a small community of 600 people, it's very difficult.

**Mr Wright:** It is, and one of the things I've been aware of. A majority of my professional life was spent practising law in small communities; for example, my last practice was in the town of Kincardine, which is not a large community. I agree with you that these are real concerns.

The other thing that comes into play is the fact that because of the size, in many ways there's an advantage. They may well be more comfortable with the kind of disclosure of information you're talking about because they may well know the person; information travels in many ways in smaller communities other than through access to information requests. I'm not so sure the concern is of the nature you describe in terms of the small municipalities. For example, in Chatham—I happen to know the clerk-treasurer—they've had one formal, and

I stress "formal," access to information request in three years.

**Mr Hayes:** That's because they call Randy Hope.

**Mr Wright:** Well, maybe they do.

**Mr Wiseman:** They don't need you down there. Randy knows everything.

**Mr Hope:** I just tell them what they want to hear. That's what I believe, if you don't have anything to hide. Some of us have a different view, but personally, I don't have any money so I don't care if people know what my debt is. I don't have a problem telling my wages for the simple fact that we're not paid appropriately. That's the openness in a more rural setting; in a larger centre everybody wants to keep everything closer to themselves and I think we've become too protective in our society.

While you were talking I've been trying to go through the BC stuff, because why re-create the wheel if we have a system that is working, that does allow the broader institutions in here? It does protect the interests and rights, I'm reading, around the client of social services.

I look at this and I'm sitting here saying, why are we being so protective? Yes, there is the right of the individual's privacy, but because of the economic situation out there people now want to be more conscious of what they're spending the tax money on and they're looking at every avenue to find an argument. We're getting more homegrown politicians starting to spring up all over.

I was looking at some of the statistics provided to us this morning from the Penetanguishene one, which showed the smaller municipalities: Collingwood in 1991 only three, in 1992 one, and in 1993 zero, but Barrie started its way up, and Oriel. You look at those smaller municipalities and you wonder, are there more inquiries because of the legislation or is it more political? I've got to weigh whether it's just political activity that's happening out in our communities or whether it's really human nature or concern the general public has.

**Mr Wright:** What you're seeing, and certainly what the statistics show as the years go on, is that there's more and more awareness of the simple existence of the legislation to provide a right. One of the more descriptive phrases I've heard for jurisdictions that don't have freedom of information legislation is that people no longer depend on the iron whim of the bureaucrat. Now they have these rights, where before they may well have gone and asked for the information and been told, "No, sorry, you can't have it," and they'd walk away and say, "I guess that's the way it is." As part of society in general, as you know, people are far more aware of what their rights are. This legislation is another set of rights, and they're being used more and more.

I come back to the theme that the rights are there as a direction. What we're hoping is that changes we propose, as well as the changes in attitude, will be the better answer; to head more along the lines you have just described.

**Mr Hope:** That leads me to my next question. You know it always takes the political will of this Legislature to make changes in legislation. As we talk about the innovative technology out there, that more personal



information is more accessible yet you have to keep the confidentiality, is it the proper way to continue through legislative—I'm looking at creating something that will be progressive and deal with the issues as they occur. Is it through your office or is it through a more regulative framework?

I don't want our privacy and information act to be stale, while the rest of society continues, until the political will is there to proceed with it. We're going to be falling behind and dealing with old problems, as we've seen the way some of our systems work.

**Mr Wright:** Certainly that is the flavour of many of the recommendations we include in our submission. It is not a matter of finding fault with the legislation as it now reads. It's more a matter of saying, let's take some steps that allow it to be current so that the issues we're dealing with today, as well as tomorrow, as much as you can hope to foresee—I think some of the proposals we make about building access and privacy considerations into the design of the electronic systems is one of those things that will apply down the road, because all we're talking about is variations.

A new issue, an issue that I think is going to become more and more important, is this whole question of data matching, information matching, record linkages. A person is involved in a particular part of government and then that information is run against another part of government; then they get some kind of hit and maybe there is some action taken on that.

We make proposals that suggest how to deal with that kind of situation, which again will, I think, become more and more important, particularly in the area of some of the comments that Mr Morin made around fraud. We feel there's a need to address those kinds of issues.

I feel that some of our recommendations are right along the lines that you're talking about and I do feel that the legislative route, as opposed to the regulation route, is probably the way you have to go to set the ground rules. I'm not a believer in setting fundamental ground rules in regulation. I think it's more effectively done in the statute itself.

1500

**Mr Wiseman:** I want to pursue this whole idea of the psychological testing and the standardizing of tests. We heard from the psychological society about keeping this secret, keeping these tests out of the hands of the general public. They made a rather forceful case that, in order for their tests to be valid and for them to have any reliability in them, they needed to do that.

There are two things that bother me about this. The first one is that if you're making a decision about the life pattern of a person, whether to be institutionalized or whether to be—you know, anything that you may do—and you're doing it on the basis of this test, that now becomes the accuser and you have a right to face your accuser. In other words, you have the right to challenge the test.

The second part in this is that in the private sector a number of companies are turning to psychological testing to determine who they're going to hire. If you answer

question 6 as an (a), you don't get the job because statistically speaking there's an 85% possibility that you may wind up being a thief if you answered it as (a), but there's less of a statistical probability if you answered it as (b).

Those are the two issues that I'm just thinking about in terms of this kind of psychological testing. I have a great deal of difficulty with employees not being able to challenge the decisions made on the basis of these tests.

**Mr Wright:** I'm not sure if the committee is aware, but I suspect what precipitated the representations you received is an order that was issued by our office.

**Mr Wiseman:** In 1991?

**Mr Wright:** I believe that's the one, yes. It is the subject of an application for judicial review. Obviously there was dissatisfaction with the order that was made and, as is the right of anyone who comes and appeals or is involved with an appeal, they've applied to the court. For that reason, since it is still before the court, I want to be careful about what I say. Clearly there are ways to address those concerns if in fact the desire of the committee was to do so.

I will say in a very general way that I do share your comment around the thought that, in terms of the results of the test, someone's life could be affected and they wouldn't know why. I think as a matter of where we are today, that's an attitude that is simply out of date in a very real sense.

I will add, as a matter of the workplace testing and the other issues around testing in the workplace, we issued a report in November which talked about monitoring of employees, the kinds of testing that are done in the workplace, including lifestyle testing.

I think once again what we're seeing—it's a bit of a theme that you obviously have heard from me today. I'm not so sure that what the employer shouldn't be doing is giving a little more thought to what is going to actually be achieved when these kinds of tests come in, whether or not the tests are an accurate predictor of anything, and in fact are you losing someone who may be a very valuable employee on the basis of a test which may have not a terribly good reputation for accuracy? Clearly we have concerns about that as well, as we expressed in our report.

**Mr Wiseman:** This is part of an ongoing move, particularly in the United States, where they're putting secret cameras into change rooms in department stores and in athletic clubs and they're doing a whole host of things in terms of invasions of privacy where you would normally have expected to have privacy.

What I fear about this the most is that if a psychologist or a professional with a PhD beside his or her name says this is okay, there's a tendency on the part of society to side with that person who is so learned, and yet there is a huge amount of historical documentation to indicate that they can err. The IQ testing in the 1920s was supposed to be infallible and it was supposed to tell you how bright you were, but when they gave it to people who came from a different socioeconomic and cultural background, it turned out that's not the case.



The same is true in education, for example. The testing to determine if you're a gifted student or not a gifted student can have socioeconomic questions in there that wind up having you turn up to be in a percentile that is not indicative of your mental capacity. I think this is one of the reasons that some of us—I in particular, who come from an education background, am very leery of the kind of testing people want to do in terms of determining where to pigeonhole people as gifted or not gifted or as slow learners and whatever you want to name them, because this is not an exact science.

**Mr Wright:** For me, that's probably the reason why, leaving aside the respect which the opinion should receive, individuals, as a minimum, has got to know what someone has said about them or what determination has been made about them. They may not be able to refute that based on the present status of the academic development or the analysis of the particular types of tests, but at least they will have the opportunity to do it. To me, that is a right they should have in those kinds of circumstances.

**Mr Wiseman:** I want to ask one question on the smart and swipe cards for the medical profession. We had a presentation before the standing committee on estimates on the swipe cards and the process of following up.

It seems to me that one of the issues there is that by accident you could wind up having all of your records or something displayed to somebody who shouldn't have them. At the same time, there has to be some way your doctor can determine whether or not the person who has the card is the person they're supposed to be, especially at the walk-in clinics.

**Mr Wright:** Are you saying in terms of what the card would contain or by way of information, or would you be considering something like a photo?

**Mr Wiseman:** The photo card was talked about. Quebec has moved to a photo card. There does seem to be some drawbacks there in terms of you can counterfeit them. You can counterfeit a passport, you can counterfeit employees' cards. You need some kind of identifiable number or something in the card and some kind of identifiable characteristic to match the person on the card.

**Mr Wright:** Yes, and in fact there are. As I said before, I'm not a techie by any means but I know there are various ways in which to verify that the right person has the card that could be built into a smart card application, which means that once again it would be the will to do that kind of thing in order to achieve what is trying to be achieved. They are something that there's no doubt we're going to see more of, and I'm pleased that this committee is raising these issues in these hearings.

**Mr Wiseman:** Who should own the medical records, the patient, the institutions or the doctors?

**Mr Wright:** My recollection is that there is a Supreme Court of Canada decision which talks about that. I believe the ownership issue is resolved, that it's the patient who ultimately owns it, but in fact there's a right of custody of a sort.

There's no question as far as I'm concerned from the Supreme Court of Canada decision that the patient should

have a right of access to that information, subject to minimal exceptions such as a concern for that person's own safety and wellbeing if he or she found out information about themselves and might do themselves harm. Other than that, I think it's relatively clear now in law that the patient does have access to that record.

**1510**

**Mr Elston:** Just one line of questioning right now, but maybe tomorrow and the next day when you're back answering questions, we'll be able to have a little fuller discussion.

We have talked about extending the application of the act sincerely to hospitals, universities and social service agencies. We've talked about its application to discovering just about everything there is to do with the administration of councils and school boards. But I think it's a little bit delinquent on our part if we shouldn't at least ask the question and go through some of the rationale about why we're not talking about our own institution, which is, of course, the Legislative Assembly.

From my standpoint, there are administrative issues related to this that we at least should have on the record and discuss. There ought to be some consideration, I think, since we've really basically said that municipalities at the local level have to divulge everything, except that perhaps with every other institution, although the assumption is that we do know what's going on, maybe it should be clearer as to why, so far, I haven't seen anything, at this point anyway, that suggests we should extend it to the Legislative Assembly, although that may have been part of a discussion with respect to the provincial act itself.

I just think if we're doing this for the councillors and for the trustees, as members we ought to really seriously consider some of the ramifications of that. Perhaps you could think out loud for us a little bit about the ramifications of that and whether or not it might be necessary if we did it to segregate the administrative side of the Legislative Assembly from the political side, which is the activities of caucuses and others, where freedom of information inquiries might divulge where each political party was taking its policy activities or otherwise.

I wonder if you might want to comment on that and if, when you're back tomorrow and the next day, you could sort of fill out the answer.

**Mr Wright:** Perhaps I could take advantage of this opportunity to do that. I agree with you. On the face of it there is no rationale for saying that the operations portion of the Legislative Assembly should not be covered by access and privacy legislation. I assure you not even if I spent a day or two thinking about it could I come up with a rationale that would support that.

I think you're correct in that there would have to be a careful look at how it would impact on the elected representatives as well as caucus etc to make sure that the appropriate allowances were made, but as far as the day-to-day operations, I can't. I'm sure those who are working at the Legislative Assembly in the operations sections may well have reasons why, but as a matter of purity, I wouldn't offer you a rationale.



**Mr Elston:** Have you had anyone approach you about the seeming inconsistency?

**Mr Wright:** Yes. One of the presenters who appeared before your committee, I believe on the Wednesday, wrote to me some time late last year. He had just found out that the Legislative Assembly—now I think he was thinking a little more broadly perhaps than just the operations. He raised with me why the assembly wasn't covered. As I say, I seem to recall seeing his name in your list of presenters.

**Mr Morin:** He used to work for the Liberal Party and the Conservatives.

**Mr Wright:** I'm always leery of using names with people because I'm so inculcated with privacy concerns that I think it's a public hearing, but he did raise that concern.

**Mr Elston:** I don't mean to put you on the spot, although I guess I am. In thinking about the issue, in your view, is there a way, as we were discussing with hospitals, of perhaps applying the act so it does deal with day-to-day operations? It is a multimillion-dollar enterprise that operates. I guess I have to ask out loud the question, and maybe Frank White will know more about this than I do, about the original discussions that took place. It must have obviously excluded them from the operation of the provincial act.

**Mr Wright:** No, again, I don't recall whether it came up or if it did, how the committee dealt with it in the review of the provincial act, but certainly I think administratively, if you're looking at amendments, it wouldn't be a terribly difficult task to implement a decision around the operational portion of the Legislative Assembly, assuming that was the direction in which the committee wished to go. I think it could be done probably by regulation and definition of "institution," which would be a change that may well be done with some ease.

**Mr Elston:** Just to switch now to another area, have you had very many difficulties with respect to maintaining trade secrets?

We dealt with the issue on testing brought forward by the psychologists. I'm more interested in relation to people attempting to get information about competitors through the information side of the act. I know that was an issue that was raised in some degree of concern by a whole series of corporate people who dealt mainly in the municipal and school fields. They thought that perhaps they might end up inadvertently having their trade information dropped out by the boards or councils as they tried to fulfil the act. Have you had much concern from a practical standpoint?

**Mr Wright:** Not other than we've had to deal with in the form of appeals where the exemption, which in the municipal act is in section 10, I believe, and section 17 under the provincial act, is a fairly broad exemption in terms of the kind of information it covers. So other than appeals, there's no specific experience in terms of complaints.

I can say this, that once again if people are dissatisfied with an order involving what they feel is their financial information, they have the ability to seek judicial review.

I can tell you there have been a number of cases involving the kind of information you describe, where they have not been satisfied with the decision of our commission and have sought review of the court. That certainly provides an additional protection, because the court will have to either agree or disagree in terms of the kinds of decision we've made.

**Mr Elston:** That's an interesting point on which you seize now, because I think one of our presenters actually came here and said: "You know, there should be somebody overlooking the commission because basically it has a whole series of mandates which are non-reviewable. Once they decide that information from an evidentiary point of view is such that they don't need any more, they can just disregard us." In fact, I think it was the people here on the psychological testing issue again. They were concerned, I think, basically about an order which had already been issued and which in fact now is being taken through judicial review.

I guess it's difficult for you to answer this, but do you think there ought to be another full court review, as opposed to just judicial review, of the commission's decisions with respect to evidentiary matters as opposed to just the interpretation of the legal issues?

**Mr Wright:** No, I don't. I think that doing that to an extent moves us away from why you have expert administrative tribunals such as ours. In the judicial review applications and in a recent one in June 1993, the Divisional Court, which was considering a particular order, gave a very high standard of deference to the decisions of the commissioner in terms of the expertise that the tribunal has available to it, an expertise that clearly the court in itself does not possess to the same extent as the commission.

The other thing I think is interesting in terms of the comment on the specific order—and I will make one observation. As part of our obligation in terms of who received notice of the appeal, we notified the distributor of the test and they had the opportunity, which they used, to make representations on whether or not the information should be disclosed. The fact is that the person who issued that particular order didn't agree with their position and a result the order was issued, but they had the opportunity.

We didn't operate in a vacuum in terms of that decision. Obviously, the result was not what they liked and they've exercised their legal remedy and I think that's appropriate. They should be able to do that; I have no problem with that whatsoever. But the idea of our commission going through a full inquiry process, issuing an order and then starting afresh in the courts as if nothing had happened before, I think is perhaps not in keeping with why you have administrative tribunals.

1520

**Mr Elston:** Tom, again to change the issue, it concerns fees. Of course you can apply to have the fees waived if there is a financial hardship in place and you would like to have the information in any event. During discussion with some of the people, they have indicated that some of the institutions actually put people through an examination of their financial background similar to



that, or in fact even more rigorous than that, of a person who might have to apply for social assistance. In one case brought to my attention a person on social assistance was actually put through an examination which required the full divulging of assets and bank balances and the whole works.

Can you tell us a little bit about, first of all, whether you have set in place a guideline that would help an institution to make the determination about need; second, if you haven't, if you're planning on doing any of that to sensitize people to this process; and third, whether or not you think there has been very much of that as a problem? I guess the answer to the first two will probably give me the answer to the third.

**Mr Wright:** In fact one of the earlier orders that was issued involved fees issues. It sort of ebbed and flowed over the years. We don't have a high volume of appeals involving fees, but in the orders that have been issued, I think we've tried to flesh out the fee waiver sections of the act in a way that we hope will be of assistance to institutions that clearly have to look at the criteria.

I must confess I wasn't aware of the degree to which you've indicated some institutions are inquiring into the financial means of the particular requester. I didn't know that. I know we have said that in order to obtain the benefit of a waiver based on financial circumstances, you have to tell something. I'm not aware of an order that's been issued where we've outlined in a lot of detail what that something might be.

But I think your point is very well made and it's something that I will certainly take back to our appeals department and I think it's something we should look at, because, as I say, I wasn't aware that that in-depth kind of look was being taken.

**Mr Elston:** It may in fact be just, again, one anecdote, but it certainly has caused enough concern that someone contacted me about it.

I guess these applications are all part of the public record and available for freedom of information applications? If they took my application and I asked for a waiver, I can then inquire under freedom of information if they've got the waiver and they've kept all that material on file so I know what they've got there?

**Mr Wright:** It at times becomes a bit of a vicious circle. Yes, someone could theoretically—not theoretically, they could apply for that information, but then you get into concerns around the application of the personal privacy exemption. The likelihood of disclosure of the information is probably not that real, but in terms of the application of the act, it would fall under the act. Yes, you're correct.

**Mr Elston:** So there could be a whole new series of records that will have to be kept current and available to make sure they've complied with their guidelines for fee waivers.

**Mr Wright:** That's true.

**Mr Elston:** To your knowledge, have most of the municipalities and school boards and others that are under this act built up a firm or fairly rigorous regime of procedural policies and directives they follow with

respect to the application of this, or have they sort of adopted them ad hoc as the circumstances require?

**Mr Wright:** I think the experience would vary. Management Board Secretariat has provided a manual, which is kept updated.

**Mr Elston:** I remember looking at it as it was being compiled.

**Mr Wright:** Fair enough, and it still exists. As you know, Mr White is here and he could perhaps answer the question a little better than I as far as his experience with its use. But I think again it's fair to say that the experience would be uneven, probably based a lot on the need that some have in terms of dealing with the legislation, particularly on the access side.

On the privacy side, a lot of it is awareness, not only through manuals but as a matter of simply being aware of the requirements of the act. I think some of the publications that we provide to organizations—in addition to the ones I've mentioned, we produce something called Practices, which outlines what we consider to be proper practices in certain areas. So we try to provide it. It's a lot of information, there's no question about it, to go out, but it's being made available to them.

**Mr Elston:** My last question: Invariably when dealing with personnel matters, particularly if there is a severance required, there is also provision in arrangements to settle outstanding or dispute issues, a provision in an agreement that says neither party shall divulge to the public any of the issues surrounding this particular settlement.

Do those sorts of provisions in contracts, where a public official is severed from their position, override the freedom of information act requirements and spirit of the act? If we take the arguments which have been put forward for divulging salaries, obviously any severance which brings forward a lump sum payment for that severance stands in the same place as salary. In fact it substitutes for the salary that would have been earned; at least that's the way it's argued.

What's your view on how we deal with that as an issue, bearing in mind I guess that if you start disclosing all of the severance arrangements for every person who is severed, that would soon build up a case for anybody who was trying to represent their client or whatever? But can you first associate yourself with the problem of whether you should divulge those tax-paid severances?

**Mr Wright:** We have issued in fact, over the last four months in particular, a number of orders involving those kinds of severance agreements. Trying to think back through the various examples of the orders, we feel, and the result of the orders I think indicates, there is a level of information that needs to be disclosed in terms of the contents of these severance arrangements. If it was a perfect world, I suppose—as you say, the reference to salaries and more open disclosure—there would be something along the lines for these kinds of severance agreements as a special arrangement.

One of the proposals we've made is around the modification, the public interest override, to allow it to apply in more situations. I think perhaps the example that you give around severance agreements is a very good one



in terms of how a stronger public interest override could work in a way that results in more disclosure.

If I may, I'll share with the committee. The British Columbia legislation came into effect in October 1993, and the commissioner has just issued his first order. The order he issued had to deal with the scale of severance settlements that the government in British Columbia was prepared to pay to individuals. He ordered that it be disclosed and it would set out the range. If you've worked *x* amount of time etc, the government's position will be that it will settle between this amount and this amount.

He listened to arguments from the government, and at the end of the day, he ordered that it be disclosed. I can tell you that some of the arguments made were that this would arm the person who was seeking the settlement to always ask for the high end of the range. That may well be, but just as a matter of information, that's the first order he issued and that's the kind of result he had. So the principle around severance I think is directly analogous to the question around disclosure of salaries; it's just an offshoot of that.

**Mr Elston:** Finally, in that regard, is there any information in government to which government itself, as opposed to the taxpayers or whatever, has a proprietary interest that is not an interest of the taxpayer?

**Mr Wright:** There's an exemption in section 11 of the municipal act, section 18 of the provincial act, which talks about that kind of information. I can recall a couple of orders where we have upheld the exemption, and I don't recall the exact circumstances, but my answer would be, yes, there are probably examples of things that the government holds which would qualify for exemption.

I don't think that in any way detracts from the principle about the public's right of access. What we have always said and acknowledged is that that right of access is subject to certain legitimate exceptions as are contained in the legislation. So, yes, there have been examples of what you say.

1530

**Mr Elston:** In any of those cases, would that revolve around the adopted policy with respect to personnel or severance or any of that in your view?

**Mr Wright:** No. It was more dealing with things that had been information sources etc that had been developed by the ministry itself and the thought that a private sector entity would be able to take advantage of the expenditure of taxpayer funds in some fashion to the harm of government at large. That's more the kind of issue that we've been dealing with.

**Mr Elston:** I wonder if the commissioner might be able to make available those orders, as examples, just so we can keep those in mind.

**Mr Wright:** Sure.

**Mr Elston:** Obviously, if a ministerial organization has that interest, then we ought to consider the same type of interest, I presume, for municipalities or school boards.

**Mr Wright:** Municipalities and school boards are protected in the same fashion.

**Mr Elston:** We should know exactly what that is before we take our deliberations too far. If you can provide that, it would be helpful.

**Mr Wright:** Certainly. I'll be happy to.

**Mr Elston:** Thanks very much, Tom.

**The Vice-Chair:** Mr Hayes.

**Mr Hayes:** It's been so long here.

**Mr Elston:** Didn't you find it informative?

**Mr Hayes:** I thought when you made those changes in the previous government you would know all those answers and you'd have this all put together by now.

In your report, on page 10, Mr Wright, you state, "The act should be amended to permit the disclosure of the actual compensation paid to all public employees, including officials and government appointees." You're also including school boards and universities?

**Mr Wright:** Yes, sir, I would be.

**Mr Hayes:** Okay. I think that's good. My question is very, very brief and it actually relates to what Mr Tilson was talking about earlier on the costs, a legitimate concern. I may be wrong, but my opinion would be that if we did extend it, that could possibly in the long run cut down on some of the expenses, because things would be disclosed more voluntarily or more easily or things would be more up front, where you wouldn't have to have some of the doubt. Maybe there'd be questions that would be answered without having to go through a whole pile of red tape, for example.

**Mr Wright:** I think to an extent we're seeing the result of the increased familiarity with the legislation as years pass. In fact there is a better understanding of what it requires. In the early days, no one, including anyone at the information and privacy commission, really knew what the act meant. There had been no interpretations out there. We've developed a fairly large body of decisions which do provide guidance.

As you progress I would agree with you that the implementation is easier because you do have the ability to look back. I know when the legislation was extended to municipalities that there was the ability to say: "All this has already been looked after. We don't have to talk about it now. Here's what the situation is." Each time it is a little bit easier, because you have that additional experience on which to rely. So yes, I see your point.

**Mr Hayes:** Okay. I'll give some other members a chance.

**The Chair:** Mr Malkowski is last on the list.

**Mr Gary Malkowski (York East):** There are two things I want to ask. One is about access to information for blind and visually impaired persons, people with low vision. I want to ask if in your experience, for example, vocational rehabilitation clients who may be requesting information because they may be going through the Ministry of Community and Social Services, if one were to ask for information, do you provide reasonable accommodation or information to them that may be in Braille or voiceprint? How does one get this to them? Have you had any problems passing on information to people like this?

**Mr Wright:** The responsibility for responding to requests for information initially is at the government level, the ministry level. In this case, as you say, Comsoc is the one who would have to provide the alternative format as far as the information is concerned.

It is not an issue that we have to deal with as an information and privacy commission, but I can tell you that we have had a number of occasions where we have provided to appellants various documents that our office produces as part of the appeal process, including the order at the end of the day which would resolve the appeal, in Braille in order to accommodate the kinds of concerns that you've raised.

**Mr Malkowski:** I'm going to ask a new question then. I'm going to talk about guidelines. In terms of a personal file, do you have the same standards for all? Let's say the government has one set and let's say non-profit organizations get funding from the provincial government and they have records themselves. Is there one standard for both or do they each have different standards when it comes to disclosure of those things?

**Mr Wright:** The standards that exist in the legislation apply across the board no matter what type of organization it is. The rules are the same. Various exemptions or reasons for not providing information may exist to take into account the circumstances of a particular organization or type of organization, but other than that the acts basically treat all organizations the same way.

**Mr Malkowski:** It's the same standard. So is there a minimum-maximum time line when you destroy information, or no?

**Mr Wright:** Yes, there is. As far as personal information is concerned, there is a requirement, I believe, in the area of one year. It has to be maintained for one year. The time period that the record is maintained when it's personal information can be extended beyond that, but one year is a minimum. One year follows after the use of the information. So there are some basic rules.

**Mr Malkowski:** That's great. Thank you.

**Mr Hope:** Mr Elston raised an important issue. He said we weren't talking about our own back door and why wasn't I talking about the provincial aspect of this. Even the suggested recommendations of changes that the commissioner has put forward only deal with the municipal freedom of information, and that's what I was mainly focusing on as an individual.

**Mr Elston:** But we are dealing with hospitals and universities, that context.

**Mr Hope:** Yes, because it was asked upon us by the minister to examine that. I thought he brought out a good point, but I just wanted to say I myself was not focusing on the provincial because I was dealing with the recommendations, plus it was also directed by the minister to look at the wage issue and the hospitals and other agencies out there. I'd just like to respond that we didn't totally ignore our backyard, at least in my perspective of it. I was focusing on what the minister had made comment to plus what was being recommended, suggested

changes by the commissioner. I just wanted that on the record.

**Mr Elston:** I accept that. We Liberals don't sort of lockstep with the minister on these things, as you know, so I was just trying to broaden the discussion somewhat. But the researcher has actually pointed out that because I didn't read the report of the standing committee in 1991, I didn't know that they had already talked about that, Legislative Assembly, which they do every time. They have actually suggested that the admin part of Legislative Assembly be covered. But the discussion in this committee's report was actually brief—in fact very, very brief—considering the size of the organization.

I apologize to the committee for raising it in the sense that it has already been talked about, but I really think that people would have a good question to ask of us as to why we don't take time to consider ourselves in the same context as other legislative bodies. I appreciate that there was no willingness on the part of anybody to overlook. It was just that it came to me as being a question that we should consider in our discussions.

**The Vice-Chair:** Thank you, Mr Elston, for bringing it to our attention that there is a recommendation in the provincial report covering this matter.

**Mr Elston:** I'm just telling you what the researcher advised me.

**The Vice-Chair:** Yes. I think that we've had a very thorough presentation here by Mr Wright, and I'm sure he must be tired after—

*Interjection.*

**The Vice-Chair:** Why don't you ask him? I would suggest that you maybe ask him privately. I think he's had a long day and I know he's been very helpful, all the information he has provided. I'd like to thank him on behalf of the committee for giving us such thorough and well-thought-out answers to the multiplicity of questions.

**Mr Wright:** My pleasure.

**The Vice-Chair:** You've certainly given us a lot of information on which to base our recommendations. Thank you again for appearing.

**Mr Hope:** Mr Chair, I would also note, for one member who has not participated in it, I thought the commissioner, Mr Wright, had done an excellent job, as a new member of the committee, of answering the questions to the best of his ability. I know he waffled a bit on one, but he was very helpful in my deliberations and for what we should be looking at as far as changes. I would just personally like to say thank you to the commissioner for taking the extra time with us today.

**The Vice-Chair:** Before we adjourn, I wonder if we want to determine whether we should make any decisions on any outstanding matters until tomorrow. The suggestion is that we should look through the summary and start tomorrow morning on the report-writing, discussing the report, and give instructions to research tomorrow, because I think there will be some instructions.

Is that satisfactory? Okay.

The committee adjourned at 1542.





## CONTENTS

Tuesday 25 January 1994

<b>Municipal Freedom of Information and Protection of Privacy Act \ Loi sur l'accès à l'information municipale et la protection de la vie privée</b> .....	M-255
Arlene Reinsborough; David Hogg .....	M-255
Information and Privacy Commissioner .....	M-259
Tom Wright, commissioner	

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

**Chair / Président:** Hansen, Ron (Lincoln ND)

**\*Vice-Chair / Vice-Président:** Wessenger, Paul (Simcoe Centre ND)

Dadamo, George (Windsor-Sandwich ND)

Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)

MacKinnon, Ellen (Lambton ND)

Mathyssen, Irene (Middlesex ND)

**\*McClelland, Carman** (Brampton North/-Nord L)

**\*Morin, Gilles E.** (Carleton East/-Est L)

**\*Sterling, Norman W.** (Carleton PC)

Sullivan, Barbara (Halton Centre L)

Sutherland, Kimble (Oxford ND)

Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Elston, Murray J. (Bruce L) for Mrs Sullivan

Hayes, Pat (Essex-Kent ND) for Mr Paul Johnson

Hope, Randy R. (Chatham-Kent ND) for Mrs MacKinnon

Malkowski, Gary (York East/-Est ND) for Mrs Mathyssen

Murdock, Sharon (Sudbury ND) for Mr Hansen

Tilson, David (Dufferin-Peel PC) for Mr Villeneuve

Wiseman, Jim (Durham West/-Ouest ND) for Mr Sutherland

Wood, Len (Cochrane North/-Nord ND) for Mr Dadamo

White, Drummond (Durham Centre ND) for Mrs Mathyssen

**Clerk pro tem / Greffière par intérim:** Manikel, Tannis

**Staff / Personnel:** Swift, Susan, research officer, Legislative Research Service





M-17

M-17

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 26 January 1994

# Journal des débats (Hansard)

Mercredi 26 janvier 1994

**Standing committee on  
the Legislative Assembly**

**Comité permanent de  
l'Assemblée législative**

**Municipal Freedom of Information  
and Protection of Privacy Act**

**Loi sur l'accès à l'information  
municipale et la protection  
de la vie privée**

**Subcommittee report**

**Rapport de sous-comité**

Chair: Ron Hansen  
Clerk: Lisa Freedman

Président : Ron Hansen  
Greffière : Lisa Freedman



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 26 January 1994

The committee met at 1013 in the Trent Room, Macdonald Block, Toronto.

MUNICIPAL FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY ACTLOI SUR L'ACCÈS À L'INFORMATION MUNICIPALE  
ET LA PROTECTION DE LA VIE PRIVÉE

**The Chair (Mr Ron Hansen):** Before us today we have the Municipal Freedom of Information and Protection of Privacy Act. I believe all the members yesterday received the Summary of Issues and Recommendations, and the order of business today would be going over that summary to write our report.

**Mr Norman W. Sterling (Carleton):** I'd like to ask our researcher, Ms Swift, if she's got any suggestions for how we might go through this.

**Ms Susan Swift:** I've thought about that. If we want to pattern this report after the 1991 report, which makes some sense because presumably they'll be read together, we should follow the outline of that previous report, and I've tried to do that in setting out the summary of recommendations. Having said that, however, committee members might feel there are some issues of more importance than others, and we might want to deal with those first and then go through the ones that seem to be of lesser significance.

**Mr Gilles E. Morin (Carleton East):** That makes sense. We know there are some issues that were brought to our attention repeatedly, so why not start with these ones because they're all fresh in our memory and then after that let's tackle the others. The ones that were brought up repeatedly are the most important ones, obviously, and need our immediate attention.

**Mr Paul Wessinger (Simcoe Centre):** I would concur with that suggestion except that I think we ought not to deal with the aspect of extending coverage of the act to other groups until we deal with the other items. I think we would like additional information on that aspect before we make recommendations on how to proceed.

**Mr David Tilson (Dufferin-Peel):** I'd concur with Mr Wessinger, although to debate whether we should extend to other institutions such as hospitals and universities, I think some time will have to be spent in hearing comments from those institutions and others about the issue raised yesterday with Mr Wright, the issue of cost for all sectors.

We are here because the act says we have to be here: The legislation says it must be reviewed on or before December 31, 1993. That's why we're doing this. My concern is that if we make our report, there's no reason this committee would ever return to this, unless we agree to return to this subject. I agree with what Mr Wessinger says, that it's probably premature to get into that discussion because we don't know enough about it yet. My concern is that we'll proceed with the report and then never return to it.

**Mr Wessinger:** There is a recommendation that could be made, as discussed yesterday, with respect to meeting with the various groups. Maybe we could deal with that first. I think Mr Hope has a motion.

**Mr Randy R. Hope (Chatham-Kent):** After listening to some conversations, there were valid points raised by everyone; even Murray had raised some points. I would like to deal with this issue of expansion, as we were asked to by the minister, taking into consideration the concerns that were raised during the hearing process. I would like to make a motion to the effect that we meet with the interested parties to discuss the expansion of the Freedom of Information and Protection of Privacy Act to include hospitals, children's aid societies, universities.

I would also like to stress, in relationship to what was just brought up, that the meetings be conducted very quickly and a report produced in a very short time frame, because it is important for us to move on it. As indicated, usually when it gets recommended, it gets forgotten about. I would like to see it dealt with right away, in a short period, to consult with those interested parties and expedite the process of making sure we act responsibly towards the general public.

**The Chair:** Maybe I missed a little. Do we write the report basically mirrored on this and then go on to the hospitals etc, or are you putting it all in one report?

**Mr Hope:** In this report, there are things we can deal with that we've heard presentations on and we know about. On expansion, there are still unknowns and we haven't been able to consult with the groups. Instead of getting into lengthy discussion about whether or not they're included, there has to be the opportunity for the interested parties to come forward.

I'm asking that the committee meet with the interested parties on the expansion of the Municipal Freedom of Information and Protection of Privacy Act or the act itself, to look at including the hospitals, children's aid societies and universities. I want to stress that the meetings be conducted within a very short time frame so we can be responsive to the general public, which has raised concerns.

**The Chair:** Mr Hope, could you write a very short motion? We can discuss it when you've got it written down, because what you had was quite lengthy. Meanwhile, we'll go to Mr Elston.

1020

**Mr Murray J. Elston (Bruce):** I think we could finalize a report around all the material on the municipal freedom of information act, and dedicate ourselves a separate section with respect to universities, hospitals and children's aid societies wherein we say something to the effect—at least from my point of view, and I think generally the committee is in agreement—that steps be taken to include these institutions in the act after appropriate hearings have been held.



I haven't heard much dissent around this table, even from some of the presenters who were making presentations on other matters or from any of the members generally. I think our interest and intent is to follow along the expansion, and our reluctance is only from a standpoint of fairness with respect to the institutions to be studied.

There is at least one organization, the Ministry of Health, that probably has all kinds of material that could be brought forward fairly quickly. The information on the universities is that they have worked on their own program but nothing has come forward. I don't know about any contacts with colleges or education, whatever that ministry is now called, and I don't know too much about what Community and Social Services has to say with respect to children's aid societies.

From my point of view, I think we could probably tie a ribbon around this report by following through the recommendations we want to make with respect to the presentations on the municipal side from school boards and others, and then the recommendation that follow-up work be done and that it be completed and a report finalized for next fall.

In my view, I don't think it would be fair to assume we could sit, have these hearings and be prepared to move any quicker than having a draft bill to include those others before next fall. It probably would be full of more errors than we might like if we move more quickly than that. My recommendation would be to do the report and have a section that requires us to complete a draft bill from the committee's work by next fall to incorporate universities and colleges, children's aid societies and the administrative functions of the Legislative Assembly.

**Mr Tilson:** As Mr Hope is writing his motion, I have no problem with what is being said as long as it's agreed that there be some formality—I gather it would be the House leaders agreeing—that this committee in due course have some form of hearings on this additional topic.

**Mr Hope:** I suggest that the report deal with what we're talking about. I believe it should be a recommendation of the committee as a whole, all of us, to all our House leaders that we would like to expedite this process of making sure there are public hearings held and that as a committee we decide how it happens. I didn't put it in the motion because I thought it was an issue about the responsibility of the committee versus the actual report we wish to put forward. I was separating the two, but if they want it in the motion, I have no problem with that.

**Mr Drummond White (Durham Centre):** I want to make a brief comment about this issue of the extension of the municipal freedom of information act. I think it's a very serious issue. We are talking about expanding it to include hospitals, where there's an expenditure of something in the neighbourhood of \$12 billion per year, children's aid societies, colleges and universities and other public bodies funded by the provincial government, nursing homes, homes for the aged and others, that are significantly funded institutions.

Were we to simply make that a recommendation from this committee without thoroughly investigating the

ramifications, without hearing representations from those bodies, I don't think that recommendation would necessarily be fruitful. I think we need to consider seriously what the implications are. Essentially, in my mind it means an effective doubling of an already very significant act, and I don't think we can do that without knowing what the effects will be. That's why the recommendation that we have additional hearings makes a great deal of sense. Some of the other issues in terms of the application of the MFIPPA could be summarized and dealt with at this point. But that extension is a very significant one, and we want to be sure it has the appropriate impact and that it is not something we are simply sloughing off on to government knowing that it may or may not be adhered to.

**Mr Sterling:** The committee is charged by the act, not the House leaders, in this matter; therefore, I would like to get on with dealing with what we've heard. After we've dealt with this, which will take probably the rest of this week, then why don't we deal with the other issue? I'm willing to vote on it. Obviously, we can't make a recommendation on this, as everybody has said, until the other side has a say. Why don't we just postpone that? We're obviously not going to do that during this recess. The report won't be final; we don't have to finish it until the end of this year. Let's get on with writing what we can about what we've heard vis-à-vis the purposes of this act, then deal with the other part later. I don't see what the big discussion's about.

**Mr Pat Hayes (Essex-Kent):** We're talking about expanding the act. I suggest we go ahead with Mr Hope's resolution right now, just to avoid a lot of unnecessary discussion at present, until we have the interested individuals or groups that may have concerns come before the committee; also, of course, to address Mr White's concerns about costs and all these things. I think it would be wise to pass the motion and get on with the report, rather than have a lengthy discussion on that one particular issue and hold things up.

**Mr Wessinger:** It seems to me we have a reasonable amount of consensus around this room. I know we have differing detailed suggestions. I'm going to ask the researcher whether she feels there is sufficient consensus to draft a recommendation based on the input of the members. She's listened to the discussion. She could incorporate all the views, in my opinion. I've listened to them, and I think they could pretty well be incorporated into a comprehensive recommendation. I'm asking whether she thinks that's possible, that there's sufficient consensus from what she's heard to go ahead.

It appears to me that we all agree we want to deal with the extension of the act to these other institutions, want to deal with it as a committee, and that's what Mr Hope's motion is. There have been other suggestions thrown out that might broaden the recommendation. Yes, we want to have hearings, we want to make sure we investigate the whole aspect. We may endorse the principle of extension, but obviously we want to be aware of all the ramifications. I'll ask the researcher if she thinks that's a reasonable suggestion, rather than us trying to come up with exact language now of how to deal with it.



**Ms Swift:** Rather than give my opinion about the reasonableness of that, I would just say that my sense of what the committee has said so far is that, yes, it wants to investigate the possibility of extending application of the act to these other institutions but that it needs more information on several levels to do that. What it would like to do at this point is proceed with the issues and recommendations that were raised with respect to the municipal act as it exists now and then defer further consideration of the extension until it's had the opportunity to hear from these stakeholders, the various groups.

My sense is that the report would be almost in two stages, as Mr Sterling has suggested, that you would have perhaps an interim report right now dealing with the issues we can deal with and then dealing with the issue of extension after you've heard from the stakeholders.

1030

**Mr Wessenger:** Mr Hope's motion includes a commitment to request hearings, which I think we should be involved in, and I don't think anybody would have any objection to that. I'm trying to work out a consensus so you can draft a recommendation based on it, rather than us trying to spend hours discussing it.

**Mr Hope:** I'm following the work done by our legislative research; the first issue is public hospitals and nursing homes and the Legislative Assembly. We know we can't deal with it. We all agree we need more public input, so why get into a lengthy debate on that section of the report? Just recommend it.

My major concern, and Mr Tilson's, is that we take it very seriously. People are asking us to examine this. We've been asked by the minister to examine it. As a committee, we have a responsibility to the general public. We have to do it. This motion serves notice to not only the minister but to the broader groups out there that the committee is very serious: "Get ready. There can't be excuses. We're going to be talking to you about it."

I was trying to pick a time frame. The next order of business is to deal with the appointment or whatever. After that, we start into this process so we can be productive and complete a report.

That's all my motion is. It's going to be a while before the report is written, but I want to send a strong message from this committee to the general public and to those contemplated as being included in the act that we're going to be taking a very serious approach to incorporating you into this act. That's the intent of the motion, nothing else.

**The Chair:** I have Mr Hope's motion. It's that the report be written on the review, and then, in the second part of your motion, I don't know whether we need more direction. Mr Elston was talking about House leaders. I'll read it and then maybe we'll have some discussion about approaching the House leaders on the second part.

**Mr Wessenger:** For clarification, this motion will mean that review of extension be one of the recommendations in the report. It isn't separate?

**The Chair:** As the Chair, I'm a little confused myself.

**Mr Wessenger:** Can we have some leeway for the researcher when she's drafting the recommendations?

**Ms Swift:** I'll summarize it, and you can tell me whether my sense of this is correct.

**The Chair:** Let me read the motion. "Mr Hope moves that the committee meet with interested parties to discuss expansion of the MFIPPA to include hospitals, children's aid societies and universities, and that these meetings be held as soon as possible and within a very short time frame." Comments?

**Mr Elston:** I am confused. I was expecting him also to have made mention of the first part of the report as well. I thought it was going to be a business resolution type of thing. I know what Randy's concerned about, but this book came out a while ago and there has been no movement made on incorporating the Legislative Assembly yet into legislation. The report we make is only a report, and the order of business will be ordered according to the government's time frame for making moves on this. That's basically going to be the result.

Our job in the committee is to word our recommendations as strongly as possible for two audiences: first for the minister who asked us basically to substantiate a position he has already—I shouldn't say he's already seized upon it, but he's certainly contemplated moving to the expansion; second, for the advocates in those various areas out in the field who have for some time wanted access into records of universities, children's aid societies and hospitals. That's the best we can hope for. We cannot push our will on anybody, but the strength of our wording is what is much more important in the context of our discussion.

I would have been happier had this motion said let's get on with first completing the report of the review of what is covered, and that we then direct the attention of the government and the Legislative Assembly to our need for further hearings to on the proposed expansion to hospitals, the Legislative Assembly and otherwise.

**Mr Hayes:** If Mr Elston wants to amend or add to that, we don't have a problem with that.

**Mr Hope:** What he just said, I agree with. I second that motion.

**Mr Elston:** We're so poor we have no paper, but I'll use the back of my notes.

**The Chair:** Let's get the wording right. Actually, this is a total plan for the committee: that we do the report we were ordered to, plus look into the expansion in the other areas.

1040

**Mr Elston:** Mr Chair, you might want to read the motion as I've formulated it, and then we could ask Mr Hope if he might withdraw his previously placed motion, if everybody is content with that.

**The Chair:** I was just talking to the clerk. It might be easier to do it that way, because it would be unfair for Mr Hope to withdraw it until we see yours.

**Mr Elston:** That's fine.

**The Chair:** Mr Elston moves that the committee complete its review of the MFIPPA and make recommendations for changes required to the act as it is currently structured, and that we further direct the attention of the



government and the Legislative Assembly to the need for further hearings to take place concerning the expansion of the act to hospitals, universities, children's aid societies and the Legislative Assembly.

**Mr Elston:** The last item I added on my own, although we were not directed to take that interest from the minister.

**Mr Hope:** I'd have no problem with adding the Legislative Assembly. The missing part, which I feel is very important, is the short time frame.

**Mr Elston:** As I said, we can't deal with the time frame in the committee except to make the recommendations very strongly worded. The strength of our wording is what then goes out to the advocates and to the government people. I already have heard from Mr Charlton that he is interested in it, and the commissioner is interested in it. Everybody's interested in it, but we can't say it's a short time frame or a long time frame. It's just the strength of the recommendation that will carry the weight.

**Mr Hope:** Okay. I withdraw my motion that was previously placed and support Mr Elston's as it has just been put forward.

**The Chair:** All in favour of—

**Mr Elston:** Mr Chair, as Mr Hope has now withdrawn his motion, I think we should read my motion anew and move it officially for the record so it can be discussed.

**The Chair:** Mr Elston moves that the committee complete its review of the MFIPPA and make recommendations for changes required to the act as it is currently structured, and that we further direct the attention of the government and the Legislative Assembly to the need for further hearings to take place concerning the expansion of the act to hospitals, universities, children's aid societies and the Legislative Assembly.

**Mr White:** I would like to suggest that we broaden that last phrase, because we are specifically naming some institutions and not others. There are many public institutions such as conservation authorities, for example, information from whom environmental groups are very interested in obtaining. We have other private institutions such as nursing homes from whom patients and individuals should have a right to obtain information. They're publicly funded. There are different boundaries in terms of some of these public institutions, and I think we have to explore those. As the motion is presently worded, it precludes us from investigating other possibilities. I suggest that we simply add to that "and other publicly funded institutions."

**Mr Hayes:** Just for clarification on Mr White's concerns, I want to know whether the recommendation on page 12 in the report would already cover it: that the act be extended to cover all government agencies, and that "government agencies" should be defined in the act as any agency to which the government appoints at least one member, and that the act should also be extended to cover any organization which receives more than \$50,000 annually in public funds. Does that address your concern? I'm not talking one way or the other.

**Mr Sterling:** In my view, the whole purpose of this motion is to warn groups that "We're coming to get you," if you want to put it that way. So let's not be generic about what we're doing; let's be specific. If we are going to bite off a huge chunk, let's put every institution that we're considering. If it's conservation authorities, if that's what you want, let's put it in.

I only say to the committee that it's not my intention to go by huge leaps here. I'd like to progress, and then another committee three years from now can consider doing more if that's necessary. I think we should only include what we've heard about to date, as put forward by the information commissioner. Let's be specific, though. Let's not have people in front of this committee if we have no intention of including them under this act. Therefore, I would not like an extension to a generic kind of situation.

**Mr Elston:** In principle, I'm not opposed to what Mr White suggests. It's just that I took from the opening comments of both the minister and the commissioner that there was a tacit understanding that if we felt we had enough information to move us to that second step of considering inclusion of the institutions added, and my addition of the Legislative Assembly, they would be prepared to assist in that regard in a more orderly expansion of the freedom of information act.

I agree with Mr Sterling that we may be biting off much, much more than we can chew if we then direct our attention to a second group of organizations that we haven't totally contemplated to this stage. The principles obviously fit them: Conservation authorities or other organizations that have members on their boards appointed by the province obviously should fall within its ambit. But let's attack the problem as it was presented to us and understand that one of the reasons it's still a problem is that there have been, at least on a couple of occasions that I know of, undertakings to develop a specific act to cover hospitals. It has been an important issue in terms of hospitals predating our administration, coming through our administration and now to yours. It has been the same with universities, children's aid societies, I must confess, I haven't been as familiar with, and the Legislative Assembly is one that has obviously gathered interest over the last three years.

If we were able to complete the review of those and implement an expansion to those areas, we would have done a huge amount of public business, and we might be able to think it was a reasonable expansion in regard to the amount of work that had to be done by the commissioner to prepare administratively for his new role.

I like the idea Mr White has given. I just think maybe we shouldn't bite off any more than what has already been put in the motion at this point.

**Mr White:** While I agree with you that the amount we're attempting to deal with is significant in terms of the parameters of what we're looking at—I understand the rationale behind the extension to public hospitals. That's an issue that's been discussed and it's certainly been brought to our committee by several deputants, but I'm not sure what the rationale is for the other areas we are precluding from investigation.



For example, as you mentioned, why are we including the children's aid societies but not community care or home care or nursing homes, as is suggested in the report? Why would we be investigating children's aid societies and not an environmental agency such as a conservation authority, which has a highly significant role in our community? Those are the concerns I have.

I would suggest that if we had a resolution which does not preclude investigating other things and if the committee or the subcommittee later decided we wished to, we could do that. But if we act in our further investigation under the aegis of your resolution, it would preclude us from looking at other things. I simply suggest changing the motion to allow us at some point to look at those other things if we so chose. We could do that by saying "other institutions such as the Legislative Assembly, children's aid societies etc." It doesn't stop us from looking at other institutions that are publicly funded.

**The Chair:** I am just trying to read the committee. I think the comments are that if it's too much at once, a lot of the faces of the committee would change if the hearings are for any length of time and it would be lost. The other thing is, the House leaders had agreed to investigate this particular area, so I think there would be more clarification also. Just observations.

1050

**Mr Hope:** We've got to move on. I agree with Mr Elston. Mr White raises that we have to look at it generally, but there have been concerns raised that we might be bringing too much into one meeting. I believe if we have focused conversations, we're able to expand it. It's on page 128, recommendation 80, which has built into it a statutory review. So we start off with these, and if we want we can build into the motion that we can continue this process but we only do it piecemeal, very progressively.

I agree with Mr Elston. As Mr Sterling said, we've got to make sure we don't open up the doors too far, that we keep very focused. That's why I support Mr Elston's motion. Mr White is talking about others. I agree, but in the sense that there ought to be reviews done in conjunction with recommendation 80, that there be periodic reviews to bring in more people as we go. But as a legislator, one who wants to make good decisions for the public, I don't want to overdo our first step in extending the act.

**The Chair:** Can we get on with Mr Elston's motion? Seeing no more hands, is everybody in agreement that Mr Elston's motion carry? Opposed? One opposed.

Now we have some direction for the committee to take.

**Mr Elston:** I just want to say that there is nothing to preclude any organization from coming forward with an amendment to this act between the times we do the reviews. If conservation authorities come forward, or nursing homes or whatever else it might be, those can all be contemplated any time, whether the ministries want to move on them or any other organization. It's just that our review is limited to a maximum time period of every three years.

Something else could happen, but I hope we can just complete this job. Perhaps we can start by running through a list of the recommendations that have been made, check off the ones we can agree about and then contemplate ones where we have some differences of opinion. But at least we could get a structure formulated so that research can start fitting the pieces together. Then we can eliminate the necessity of discussing too many of the uncontested issues and just revolve around a very limited number of contentious ones.

**Mr White:** Following Mr Elston's comments, I'm wondering whether we could include that in the body of our report, that it is our intent and our hope that other groups could possibly be included as time goes on, because it's beyond the scope of our capacity—

**Mr Elston:** I have no problem indicating that while we've enumerated four organizations, there are others that have come to our attention and we ought to keep our minds open to further expansions. I have no problems with that at all.

**The Chair:** I think concerns from some of these groups will be brought to the attention of the government, and the priorities will be groups that need more freedom of information. Would you like to go on, Mr Elston, with the recommendations and see where we agree? Let's just make sure we're reading from the same summary. It's 0641/93-94, Summary of Issues and Recommendations. Has everybody got a copy? It was handed out late yesterday afternoon.

**Mr Elston:** Do they include Ms Reinsborough's?

**Ms Swift:** No, they don't include anything from yesterday, but if you want to refer to them—

**The Chair:** Mr Elston, do you want to start off with the recommendation?

**Mr Elston:** I guess page 3 is where we could begin. I'm not sure how far we need to change the preambles. The "in the custody or under the control of" issue really focuses on councillors' notes, or I suppose trustees' notes or anybody else's, and whether an outside solicitor would be compelled to deliver his or her records relating to a council meeting to freedom of information. I don't know how to deal with that. I think "in care and control of" leaves it pretty wide open for somebody to say: "Here's a record. Why don't you take that to your office? I don't want to have it here." Really, in each occasion we have a decision to be made about whether the record is in care and control of.

I read a section of the decision by Commissioner Linden on care and control and the intention of notes when he suggested that notes be made available. He really laid down the set of principles that have to be used when you contemplate whether or not the record should be made available to an individual who's seeking it, and ultimately decided that the records that were made up of notes provided to a councillor, plus her own notes, would be made available to the individual. But it was on that case-by-case basis, and I would think we have to be very careful of the "in the custody or under the control of" phrase.

**The Chair:** Ms Swift, was there any mention of this



particular issue in the BC act or other jurisdictions on the wording? What has been done in other jurisdictions is sometimes valuable to give some guidance to the committee. While you're looking that up, I'll go to Mr Sterling and you can report back to the committee.

**Mr Sterling:** I agree with the commissioner's recommendation to amend clauses 1(a) and 1(b) of the act. Quite frankly, I don't care whether we add the new provision he suggests to make public bodies more accountable to the public. That was the stated intention of the freedom of information act. It's up to other members on that.

With regard to records in the custody of an institution, which Mr Elston has spoken to—I don't know whether section 1 would require amendment or another—I had a great deal of empathy for the councillor who appeared in front of us and think there should be an amendment to the act. I would put this in the form of a recommendation, although I don't have the specific words, that when a councillor or municipally elected official, whichever is necessary to include trustees and anybody else, puts his own notations on a document, those are not records of the institution or controlled by the institution and should not be subject to the act. They're his personal property, unless he in some way makes an effort to have them become part of the institution or whatever.

**Mr Wessenger:** I tend to agree with Mr Sterling, but I'm having some difficulty understanding how the notes of an elected official end up in the "custody or control" of a municipal government. I'd like to know how that would actually occur, because I would think they'd normally remain in the custody of the individual elected official and not find their way into a file of the corporation or the school board. Maybe I'm wrong. Am I right that it's by inadvertence that the notes of an individual get left in the hands of the corporation? That's what this exemption is designed to cover, is it, Mr Sterling?

**Mr Sterling:** I think Susan has done a paper on it and said that in fact the concerns of this particular witness were well founded.

1100

**Ms Swift:** It's not so much the location of the document as the circumstances in which it was created. The commissioner has made an order saying there are several kinds of questions you should ask to determine the nature of the document or the circumstances in which it was created. If it was created for the purposes of performing the functions of a councillor or another elected official, that document is one that is in the care or custody of the institution. If it was a notation regarding some personal information, for example, a grocery list or something else that was not connected to the performance of functions of the councillor, it would not be in the care and custody of the institution. That seemed to be the distinction that was made.

**Mr Wessenger:** Then I would support Mr Sterling's recommendation.

**Mr Elston:** Is it the case that the clerk would not be able to do anything with those notes other than keep them if they were left on the table at the end of the day? Can

they be collected and destroyed? If a councillor said, "Here are the minutes I had; please take these and destroy them," can they direct that? Is there any prohibition against the clerk collecting and disposing of that information?

**Ms Swift:** I hesitate to answer that question because I'm not entirely sure of what the act requires in terms of retaining documents, but my sense is that you can destroy documents.

**Mr Elston:** The councillor could have destroyed their documents on their own, but if they left them there and said to the clerk, "Destroy them," are they prohibited from doing that? I agree with Paul in several ways. How would you end up having a record unless you intended to have a record of all this material? Can you imagine collecting all the minutes of all the meetings, with all the jottings that go on—at least some of the jottings I've seen on materials at meetings—and keeping those compiled in your municipal or school office? That's an amazing contemplation.

**Ms Swift:** Looking at the act, there is nothing in part I that deals with access to general records that has anything about the collection and retention of general information. There are sections in the act in part II dealing with the protection of individual privacy and rules about the collection and retention of personal information, but there seems to be nothing about the general. I assume from that that certainly those records could be destroyed.

**The Chair:** Just for clarification, since we don't have Hansard, if I remember correctly, I believe the file of the gentleman who came forward was at home. It was his own personal file. He had minutes from a meeting, typewritten, and he wrote his own comments alongside and put it in his file for his own reference at home. He was asking the question at that point since it was his own file; it wasn't a public file but his own reference to certain minutes at a council meeting.

Maybe this is where the committee is taking a look. Are these public documents or are they personal papers that have been taken home which are duplications? The official record is at the town hall. This is something he could pull out. I don't know if you can remember or if you've got it written in the recommendations here. I don't know if there are other committee members who are a little confused on that particular presentation.

**Mr Hope:** I go back to the commissioner's report, page 25, which talks about some of his notes in the possession of the institution. The two recommendations, I take it, were Nepean and TM, whatever "TM" stands for. Is that what we're making reference to?

**Ms Swift:** That is the town of Mariposa. An index to the acronyms is contained at the back of the summary.

**Mr Hope:** Okay, but that's what we're making reference to. I notice on page 25 of the commissioner's report that it talks about "in the custody or under the control" of the institution. We have already agreed with Mr Elston's amendment. Under the purpose of the act, we've agreed to section 1, which should take into concern the issue that was raised in bullet points 3 and 4.

I refer back to the commissioner's report and I see the



commissioner has addressed that with the wording he has now put forward. Maybe I'm wrong, but I need a clearer understanding then, because listening to Mr Sterling explain—and he wasn't trying to make a motion but he was trying to bring it to our attention—I referred back to the commissioner's report and I thought it was addressed. What I've read so far on pages 25 and 26 is being addressed in the part of the report we just agreed to.

Mr Sterling's shaking his head. Please explain it to me.

**Mr Sterling:** If I may, the first amendment we have in terms of the act in dealing with section 1 was a clarification of the wording, which the commissioner sought to change, the purpose section of the act, 1(a) and 1(b), as contained on page 3 of our summary. I think that has almost nothing to do with the second issue in terms of notes by an individual.

**Mr Hope:** Could you read the rationale for why the commissioner has put forward this recommendation? Did you read that part?

**Mr Sterling:** Yes, I have, pages 25 and 26.

I don't think it's incumbent upon me as a member of this committee, or any other member of this committee, to draft the legislation. All I think we have to do is put forward the recommendations. My view is that there should be some alleviation of this problem for municipal councillors who want to make notes in municipal council meetings or in the privacy of their homes dealing with municipal business. I don't think they should be part of the public record.

However we define that, or the government of the day chooses to define where the limits of that should be, that's a discussion for another day as far as I'm concerned. I just think that problem should be addressed. I don't think that if I'm a municipal councillor and I get a planning document and in the quiet of my den at home I am scratching on it, that should become part of the public record. Evidently, according to what the information commissioner has ruled, it is part of the public record. I think it should be part of the public record once I have shared that with somebody else. Those would be the limits I would put on it.

If the government wants to have those same kinds of limits, fine and dandy. If they want to put some other kind of limit on it or if they want to present to me some reasons why we shouldn't do this in the future, fine and dandy, I don't care. Maybe that's a discussion for another day. But I am convinced at this stage of the game that this is an unreasonable restriction on how a municipal councillor can effectively function. If he can't make notes and not have those publicly exposed, when he's effectively making notes to himself so that when he goes over this subject again—then I think that doesn't allow a councillor to do his job properly.

1110

**Mr White:** I don't know the circumstances of the ruling of the privacy commission in regard to those councillor's notes, but I would think in looking at the suggested revision—we're talking about things which were in the custody and control of an institution. As we look on page 26 at the top, it talks about, "any personal

information about the individual contained in a personal information bank in the custody or under the control of an institution' and a right to access 'any other personal information about the individual in the custody or under the control of an individual.'"

I would suggest that this amendment would speak to issues such as information about Mr Sterling which is contained in an OHIP data bank, for example, or whatever. The issue of what notes one might take, which are for one's personal use, should not be in the custody or control of the township or whatever. How that happened is, I'm sure, a very interesting and curious incident.

I would like to argue in favour of this recommendation. It speaks really to the issue of people having access to information about themselves which is in the custody—it's their access, their information. This amendment really clarifies that it is their property. For example, when we had the psychologists before us and they were talking about notations that people might make, records the psychologist might make about an individual, that individual should have a right to see those records.

**The Chair:** Mr White, are you going off the subject? This isn't part of the review. When the psychologists came forward, there was some concern they had with medical records and we aren't looking at medical records, just to keep on track here.

**Mr White:** Thank you, Mr Chair. Under the present MFIPPA, medical records, or any records that have to do with a psychiatric hospital where psychologists are employed and paid by the provincial government, are subject to the Freedom of Information and Protection of Privacy Act. They are subject to that act if they're under the employ of any board of education.

Those statutes we are reviewing control institutions which employ the majority of social workers and psychologists. If we extend the application of this act to public hospitals, it would also include medical doctors' files as well that are in the custody and control of those public hospitals. So I think the issue of those personal documents is very much at issue here. It's at issue in regard to the matters we're reviewing; it's also at issue if we extend this legislation.

I think people should have the right to access information about them which is in the custody of an institution, and if an individual professional or a counsellor makes notes that are personal and private, that is not something which should be in the care and custody of an institution. But all other information should be accessible and that's what this amendment would speak to.

**Mr Hope:** There are two things here, and I always reflect back to what the commissioner said. We're talking about accessing public information.

I listened very carefully to Mr Sterling. He talked about municipal information which is not personal; it's public. He made reference to municipal planning, which is public information. Forgive me, but if there is information related to a decision that has been made, and usually it's when a decision is made, that it was part of a decision process or part of corporate information, if I turned over information, until it's shared, and according to what



the recommendation of the auditor is, "in the custody or under the control of an institution," I can still sit at home with a municipal plan and make my little footnotes. But if I reveal that, or exchange the information to somebody else and it becomes part of the institution, then I'm entitled to that information according to the changes we're supporting.

When I look at, is it personal information? No, it's talking about a municipal function. Is he expressing a view as a municipal councillor, or is it John Q. Public and he's reflecting it as a municipal councillor, he's doing it in his role and responsibility? I believe it's public. It's part of a preparation of decision-making process, and I believe that's public.

It's fine when he keeps it in that closed stage, but until he reveals it, and when it becomes more of an open process and it becomes part of the institution, then it becomes covered under the amendment we just agreed to.

**Mr Sterling:** Randy, let's not worry about what's covered and what's not covered. Are we in favour of the principle when that a councillor or a trustee or whatever writes some notes to himself, they should become part of the access procedure?

**Mr Hope:** If that's a direct question you're asking, then I agree with you on that one.

**Mr Sterling:** That's what I think we should write in our report and not worry about definitions and all the rest of it because there are several ways of reaching that goal.

**Mr Hope:** Yes, but I listened to you very carefully in your explanation when I was asking you some questions about, isn't it covered under here? Norm, you were making reference to the municipal. He might have a plan in front of him that he's making some notes about. When I hear you talking about that, that tells me that's public-bodied information. He's making a decision or something is being written on paper. That's what I was taking. When you're saying somebody writes a note to remind him to do something, you've changed the focus of what you explained to me earlier. I'm trying to listen to what you're saying.

**Mr Sterling:** I chose a planning document because it's usually yea thick. As a municipal councillor, I would suspect many of them would go through it and say, "How does this affect this, or whatever?" He would take that to the meeting and sit down with it.

**The Vice-Chair (Mr Paul Wessenger):** Could I just make a suggestion here? The way we're proceeding we're not going to make very much progress. What I'm going to suggest and what's been suggested by the clerk is that when we have a recommendation made, if there's a general consensus, it should be put in the draft. We're dealing with draft recommendations today. We're not dealing with final recommendations. What I'm suggesting is that when any suggestion is made where there's a general level of support, even though it may not be unanimous, we put it in as a recommendation, as a draft, and then we can go back. If we have full debate on every item, we're never going to get through this whole process.

I'm suggesting that Mr Sterling's suggestion has a

reasonable amount of consensus so that we accept it as a recommendation. I would suggest we deal with each matter in that way today, because if we have to debate everything, we're never going to get through this at all.

With that, if somebody wants to make some more comments, that's the process I'm suggesting. We're dealing with draft recommendations. We're not dealing with final recommendations. We're not going to vote on any recommendations. We're going to go through the act and perhaps we can incorporate all serious suggestions. Maybe we could do that. Then all serious suggestions would be incorporated into the draft report, and where there are alternatives, we'll be able to look at those alternatives.

I think that would be a better process. As I said, I think the only way we can come up with a report is take all serious suggestions by committee members and incorporate them. That's my suggestion. Mr Tilson first.  
1120

**Ms Swift:** There's just one thing. It seemed that members might be confusing two things; that is, firstly the recommendation by the IPC as to section 1 perhaps would more appropriately have been put under technical amendments. The problem, as it's phrased on page 25, is that there is inconsistent wording in the act. A second issue, which has also been discussed in the same context, is the issue of the marginal notes. I'm just concerned that we might be confusing the two.

**Mr Hayes:** Mr Chair, are we going to have a debate about the question or are we going to get a turn to talk?

**The Vice-Chair:** I just made the suggestion. If there's no problem with my suggestion, we'll proceed with the discussion.

**Mr Sterling:** Why don't you put the question and then you can get an answer?

**Mr Hayes:** Point of order or clarification, whatever you'd like to call it, Mr Chair: We're having discussion here back and forth. The longer we debate, the more confusing we make this particular issue look. I would suggest that we have Priscilla Platt from FOI to help clarify this issue, especially when we're talking about records in the custody of an institution. I think we're really going overboard on some of these issues.

**Mr White:** Why don't you let Ms Platt explain?

**Mr Hayes:** I'll let her do that, yes, thank you. I won't be like others.

**Mr Tilson:** I want to make sure I understand the researcher's report, which is certainly a very thorough report. Page 4 deals with severability and section 4, and I want to make sure I understand how you're doing this. Are you referring to section 4 of the act?

**Ms Swift:** Yes.

**Mr Tilson:** Am I in order to ask what—

**Mr Sterling:** We're not there yet.

**Mr Tilson:** We're not there yet? I thought we were in that overall section.

**Ms Swift:** I think at this point the discussion is limited to the first recommendation, section 1, purpose of the act.



**Mr Tilson:** Okay, thank you.

**The Vice-Chair:** I now will ask if Ms Platt would like to add anything for clarification.

**Ms Priscilla Platt:** If the committee wants me to clarify something about custody or control, I am happy to do that. Also, we put out something called an annotation of the legislation. I believe the legislative library has a copy. What it does is summarize the decisions under both pieces of legislation. In reading two pages you can find out what the commission has determined custody or control to be.

Essentially, a minister's notes, for example, in the provincial context, a cabinet minister's notes, in so far as they are integrated with the records of the ministry and they relate to ministry business, are in the custody or control of the ministry. It would be a departure, for example, to do something differently at the local level. The provisions that apply at the local level are the same, the identical provision at the provincial level. The commissioner has interpreted them similarly.

What one looks at is, what the commissioner has said, which is a very important idea is, whether it is related to the business of the institution, but also whether it's integrated in the same file.

In fact, there was one decision emanating out of the Premier's office where certain big-L Liberal Party records, dealing with contributions to the Liberal Party, were integrated with all the other records of the business of that particular institution. The commission ruled those were in the custody of the institution. There's a distinction between coverage under the act and accessibility.

The fact that something is covered by the act doesn't mean it's therefore a public record, as I think some members had indicated. It just means it's covered, and there may well be exemptions that apply. I think what the commissioner has emphasized very strongly is this idea of separating them. The elected officials at the local level, because of the training we've done, I believe are aware of that.

Secondly, the commissioner has said in respect of board members' tribunal notes—in other words, the personal notes of the board member or decision-maker—that in so far as those notes are not integrated in the files of the tribunal and are not required to be taken, they are not in the custody or control of the institution and are therefore not covered under the act.

Those are some of the ideas that the commissioner has developed in this regard.

**The Vice-Chair:** I think all members here, as members of the Legislature, are concerned that their personal files with respect to their decision-making process when they are dealing, say, in their capacity as a parliamentary assistant could be subject to disclosure. They're all very concerned about that aspect. I think we feel the same with a municipal councillor. In other words, we feel that what we do when we're preparing in our decision-making process ought not to be subject to freedom of information. I get the impression from what you said that they are subject to freedom of information.

**Ms Platt:** There would be a number of factors.

Ostensibly, if a request came in that covered some of those records of the parliamentary assistant or the elected official, one would have to look at the circumstances. For example, are they integrated with the other government records and therefore archived and subject to records retention schedules and so on?

That may not be the case, because we have done a significant amount of training at the provincial and local levels, and because of the commissioner's orders with respect to emphasizing this issue of whether they're integrated, whether they're in the same file with all the other records in respect of that decision-making that the government or the municipality is making, because of that distinction that the commission has emphasized considerably in its decisions.

There are steps that can be taken to ensure that those perhaps are not covered, but again it's a question of fact in every case. That is considered by the commission to be a significant factor in not making them covered; that is, that they're not integrated with the rest of the files.

**Mr Tilson:** A question of the researcher: Looking at your report on this topic, specifically in response to the councillor, Mr McCormack, from Mariposa, if I understand what you're saying, this isn't necessarily the law, what Mr McCormack has said, as being a decision from the commissioner. What I understand you're saying is that the appeal to the commissioner was over fees and that in passing it's acknowledged that at least one municipality, the township of Mariposa, ruled that these notes were available. Is that your conclusion as to what the law is?

**Ms Swift:** Actually, this isn't one of my reports; it's a colleague of mine, Andrew McNaught.

**Mr Tilson:** Oh, I'm sorry.

**Ms Swift:** That's okay. As I understand it, there are two orders that he's referring to. The first is the one dealing with the township of Mariposa in which the central issue was the question of fees and there was this other side issue, or it was dealt with in that way. I think it's order 120 that dealt more directly with the issue of the notes.

**Mr Tilson:** Yes, but it makes it quite clear, at least as I read Mr McNaught's report, that it was that specific municipality, rightly or wrongly, that released this information.

**Ms Swift:** Yes.

**Mr Tilson:** My concern is, what is the law of the province of Ontario, and I suppose the law from the commissioner, as to whether this information should be made public? We're dealing specifically with a municipal councillor's notes.

**Ms Swift:** I don't believe that there's been an order right on point or that there's been a case that's been directly on point, but order number 120 dealt with notes of a person who was conducting interviews of a person for a position with the women's directorate. As I understand it, the commissioner set out a series of factors or questions that would have to be considered in determining whether or not these things ought to be made public. I think Ms Platt has also said that even though they



would be subject to the act, the other question is whether or not certain exemptions might apply in those cases.

1130

**Mr Gary Malkowski (York East):** Just a clarification on one of the points that has been mentioned: Ms Platt, you talked about personal notes that are kept in a file. Even if they are personal notes that perhaps just by accident have got in there, a letter or something, is that something that would then be under the care and custody? Is that part of it or would it be a person's own personal information?

**Ms Platt:** The act doesn't draw the distinction between personal notes and other notes. If they're in the custody or control, which is a very broad concept, they are covered by the act. The commissioner, however, has introduced certain factors or situations in which the notes may well be outside the purview of the act, and one of them may well be what you're indicating, sort of the intention of it. Was this something that was required to be produced? Was it something in relation to a constituent member, for example, which might be a personal matter and have nothing to do with the legitimate business of the government or of the institution?

Also, what was the intention about integrating those in the institution files? The commission has felt that this was a very significant sort of determinant as to whether it's in the custody or control. In the case you've indicated, it may well be that the commission would say that it was not because it was accidentally in another file, that the intention was not to integrate it with the files of the institution, that it was a personal matter, that the notes did not have to be produced and so on.

Those are some of the factors the commission has felt are significant and have, in other cases, resulted in records not being under the purview of the act.

**Mr White:** I'd like to explore this issue a little bit. We're talking about something which might have ramifications and might not. For example, if I am, during the course of these hearings, making gratuitous notes about the colour and quality of Mr Tilson's ties or whatever, I doubt very much that those notations would be gathered up by the clerk and entered into the public record of our meetings.

If, for some strange and peculiar reason, that were to happen, if Mr Hansen, for example, in his review of the law—and he of course would have the final copy—were to inadvertently in pencil or whatever make some gratuitous comments or notations in an area where he should be putting nothing but his signature or initial, that might fall into the public record.

What I'm curious about though is that those personal notes could not be seized upon unless they, by happenstance, by curious omission or commission, end up in a public record. The commissioner could not, for example, request me to release my personal notes about when I'm hiring someone and that I might make in the course of interviews or any notation I might make about Mr Tilson's tie during the course of these public hearings. Is that the case?

**Ms Platt:** The Legislature isn't covered, so currently

of course your records wouldn't be covered. But if you were covered, then I think that as it would apply in other contexts, inadvertent comments that are made in a job competition or otherwise are accessible. One of the implications of that is that people are making better notes. They are not writing down comments that might embarrass them and so on because they do operate under the purview of the freedom of information scheme.

The scheme itself doesn't recognize the distinction between what one would call one's personal notes and other notes, other than, as I've indicated previously, in so far as whether those are required to be produced and how they're integrated with the files and so on.

**Mr White:** But if they were not part—

**The Chair:** Mr White, I might interrupt—

**Mr White:** You might interrupt?

**The Chair:** —that you'd better keep notes on what you're saying because you're not speaking into the mike so that Hansard can pick up and note what you're saying. If you don't mind, speak into the mike, please.

**Mr White:** Thank you.

I'll inquire further. What I'm asking is, if in the course of an interview I'm making notes in my own handwriting for my own personal use, which I then dispose of, and it's not part of a file and is not submitted into a file, could those notes be requested?

**Ms Platt:** That's a bit of a grey area. Your question is an important one. The act does require that personal information such as one might create or collect during a job competition be retained for a minimum of one year, and as long as one records it, then technically one cannot destroy it. It is kept. It is a record under the act. I think you'd be in a difficult position.

I don't think we've had this precise situation. We've had very close to it in order 120, as mentioned by the researcher, where notes were kept during a job competition by an individual on the panel and taken home. They were, as far as she was concerned, her personal notes. The commission ruled that they were in the custody or control of the institution and were governed by the act. So we have one context of that sort of thing.

I think job competitions are a bit unique. It's a little different when you're talking about elected officials who are creating notes about constituent matters that perhaps are not related directly to the business of the institution and so on. When you get into something like a job competition or a meeting that is directly related to a decision that the institution is to make, the records are more important to be covered by the act and I think the act in a broad context would generally cover them.

As I say, in the one decision we've had about Liberal Party contributions, the one that arose out of the Premier's office, the commission said they were covered simply because those records were integrated with all the rest of the records of the institution, and as a result of that, it felt the intention was to have them covered even though one couldn't directly connect the records themselves to the business of the institution. Obviously they were big-P political records. I think from that one gains some understanding that the commission has made it very



significant how these records are integrated.

**Mr Tilson:** On a point of order, Mr Chairman: I'd like to return to your question as to how we're proceeding with this report. Is it your intent that someone puts forward a recommendation as to whether we agree or disagree with the recommendations as itemized by the researcher and then permit extensive debate on that, or will it be a general consensus? I do concur that the way we're going, we'll never finish this report.

**The Chair:** I agree with you, Mr Tilson. I think we have to have comments on it before a decision is made, but I don't think we can drag it out for half a day for each recommendation. I think we have to bring our points forward very short and see whether the committee agrees with that particular recommendation. Is that your idea also?

**Mr Tilson:** I don't want to limit debate; I'm just trying to clarify how you intend to proceed with this report.

**The Chair:** I think when we take a look and we're all in agreement, we would proceed and say, "That recommendation the committee agrees with." As you say, as for the length of debate, we don't want to cut it off, the points put forward, but I think we also have to keep on the subject very closely.

**Mr Hayes:** I agree entirely with Mr Tilson. I think that on this particular issue, for example, we are exaggerating this issue. If I'm sitting on a municipal council and I'm making myself some notes about a proposed question I may ask to a delegation or to the clerk or administrator or something like that, that's fine, that is my property, but if I take that and submit that to the clerk, then it becomes the institution's property.

We're talking about original documents here. That's what we're talking about. I would say that if the clerk was making certain oughts and dots or whatever on that particular original document, then that would be the property of the institution, but I think we're getting a little carried away here. If I'm sitting in a council meeting and I make a few notes on a piece of paper, stick it back in my pocket and go home, and I don't disclose my thoughts on that particular meeting to anybody, I don't think it has anything to do with the institution or anyone wanting to know what I wrote down.

All we should be doing is saying to the municipalities and the municipal elected officials that we don't expect you to have to do any more than the people of this Legislature have to do. I think that's the bottom line where we should be.

I think we're getting a little carried away here when someone says, "I want to know what you wrote on that piece of paper of yours that you stuck in your pocket but you didn't share with anybody else." I think we're getting a little ridiculous.

1140

**Mr Tilson:** I'm just trying to figure out, are we expressing recommendations so that the researcher, or whoever, is going to prepare a draft report? Is that the exercise we're going through here?

**The Chair:** A draft of the—

**Mr Tilson:** Well, then, I think it's self-explanatory. With due respect, we are getting carried away.

**The Chair:** That was the question I asked at the very beginning of the researcher of that particular issue, to make the committee aware, because as the Chair I didn't completely understand the notes and whether they apply and that to shorten it down, I thought would be beneficial. I think I also asked if she had any information of what's done in other jurisdictions to guide this committee, and I believe she said in BC there is no information on that particular issue, so it hasn't been addressed.

**Ms Swift:** Not that I'm aware of.

**The Chair:** I see Mr White has his hand up. I take a look at the committee, which is sort of in agreement. There have been other issues thrown out. Mr White, you don't agree with the—

**Mr White:** I don't disagree. I'm in support of the—

**The Chair:** Well, do you agree?

**Mr White:** I don't disagree with the recommendation. I'm strongly in support of it. It has a lot of merit. My concern is as I hear Ms Platt's discussion of, I think it was, item 120, the question of what are personal notes. Are they personal notes or are they not personal and whose property are they? I think that's an issue that bears some discussion, but I think that's something we could include in our recommendations. The issue of what is personal bears some exploration and some expansion while we still support the requested amendment to the act, and I certainly support that amendment.

**The Chair:** You support the recommendation of what the committee is saying here?

**Mr Hope:** Not all of us. Some of us have kept our comments. Some of us have made our comments, which we don't agree with, of putting it in the report, but I've expressed those. If the majority feels that it ought to be, then that's the process. To say that everybody agreed with it—I just wanted to clear you up on that, that everybody agrees with what Mr Sterling has said.

**The Chair:** In principle you agree—

**Mr Hope:** In principle to be a part of the report; I don't agree with it, but I've expressed my viewpoints and now we'll just move on. The majority rules.

**Mr Elston:** I think the committee ought to understand that while we will recommend something here—particularly, we recommend that something be done with this notes issue—at the end of the day the legislation that comes forward will be under the carriage presumably, I suspect, of the Chairman of Management Board. They will have another determination and discussion, and the bill itself will come back here for us to discuss and play every one of the words to their fullest extent so that we understand exactly what is intended.

I think it's only for us to acknowledge that there's a problem. If we agree, we should direct, with some specifics perhaps, the direction the resolution of the problem should go, but I don't think we should carry the discussion to too large a degree into the minutiae of the actual drafting problems.

In that regard, I wonder if it wouldn't be helpful if

perhaps the caucuses could all go away at the break and go through the list that has been compiled and come back and enumerate one point after the other, without discussion, the points which they have seen as being unproblematic. The three of us could compare notes and then we could list all of those items off and then get down to actually discussing the areas where we have some real deficiencies of understanding.

From my point of view, that would make the exercise much easier for you as Chair, because you could probably eliminate a number of the point-by-point questions. Research could then begin to see a structure coming in the report, and we could save the committee time for issues which really are compelling us in different directions. I think that might be a lot more productive, if I could make that as a recommendation.

**The Chair:** Mr Elston, I'll ask the one question, whether between 12 and 2 o'clock the three caucuses would have enough time to wind up going over—as you know, sometimes there are meetings and everything else scheduled.

**Mr Hayes:** Can I suggest 2:30?

**Mr Elston:** Yes, 2:30 or 3 o'clock, if that makes it better.

**The Chair:** I would say, if it's agreeable to the committee here, that we resume sitting at 3 o'clock, because that would save a lot of time; one hour not lost in committee but most likely gaining three hours.

**Mr Elston:** I think that might be helpful.

**The Chair:** I see that everybody's in agreement with 3 o'clock. If you do have meetings, you still have an hour.

**Mr Malkowski:** Keep it simple.

**Mr Elston:** If it's possible that we could conclude our discussions among the caucuses shortly before 3, then we could have a little get-together and compare lists. We could read off those agreed upon when we come back, right at 3 o'clock to start, and then enumerate the ones we really want to talk about.

**Mr Hope:** What if we have a problem where the caucuses can't agree?

**Mr Elston:** Resign.

**Mr Malkowski:** I agree with what Murray Elston was saying. Let's keep it simple. Let's have a break and then we can resume later.

**The Chair:** Is everybody in agreement that we recess till 3 o'clock? Okay.

#### SUBCOMMITTEE REPORT

**The Chair:** We've got one more item left here, if we can just go over it. It's the report of the subcommittee and we're just going to hand out the copies now. I believe this—I'm guessing on this one—took place in September.

Interjection.

**The Chair:** No, it would have been after that. It says:

"Your subcommittee met and recommends the following with respect to the attached letter from the Speaker:

"1. That the Chair should write to the officers of the Legislative Assembly and inform them that they are welcome to appear before the committee any time on an issue-by-issue basis.

"2. That the Chair should write to the Ombudsman and inform her that if she has any concerns, she should discuss them with the standing committee on the Ombudsman.

"3. That the Chair should write to the Provincial Auditor and inform him that if he has any concerns, he should discuss them with the standing committee on public accounts."

Any discussion?

**Mr Hope:** What is this? We don't want to talk to these people or what?

**The Chair:** Okay, so we recommend that—

**Mr Hope:** Wait a second. Somebody explain something to me here.

**The Chair:** Mr Hope, I believe you weren't sitting on the committee before.

**Mr Hope:** That's right. You're asking me to conduct a vote, so I want to know what was—

**Mr Hayes:** Just explain it very briefly, Mr Chair, that's all. Let us know what your intent is.

**The Chair:** What I have to say is that I don't think I was at this subcommittee meeting. I was not the Chair at that particular time. Mr Wessinger was not there also, and Mr Sterling is missing.

**Mr Hayes:** On a point of order, Mr Chair: Is anybody here now who was on that subcommittee who could explain this thing to us? That's all; simple.

**The Chair:** Mr Sterling was at the meeting, so maybe we should just leave this, because our clerk also was not at that meeting.

**Mr Tilson:** Does this report exist?

**The Chair:** We'll recess until 3 o'clock.

*The committee recessed from 1151 to 1505.*

**The Chair:** Earlier I guess our minds were a little blank and we had the report of the subcommittee. It was read into the record, with Mr Sterling coming back and refreshing some of the new members here on what was discussed. We felt this was agreed upon by the subcommittee and would like to have approval by the committee.

Mr Hope had a question. He has dropped his question. Any other questions on the subcommittee report?

I take it that the committee will adopt the subcommittee report. All agreed with the subcommittee report? It looks like everybody's in agreement. Opposed? None opposed, so we'll adopt the report of the subcommittee.

The committee continued in closed session at 1507.





## CONTENTS

Wednesday 26 January 1994

<b>Municipal Freedom of Information and Protection of Privacy Act \ Loi sur l'accès à l'information municipale et la protection de la vie privée</b> .....	<b>M-283</b>
--	--------------

### STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

**\*Chair / Président:** Hansen, Ron (Lincoln ND)

**\*Vice-Chair / Vice-Président:** Wessenger, Paul (Simcoe Centre ND)

Dadamo, George (Windsor-Sandwich ND)

Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)

MacKinnon, Ellen (Lambton ND)

Mathysen, Irene (Middlesex ND)

McClelland, Carman (Brampton North/-Nord L)

**\*Morin, Gilles E.** (Carleton East/-Est L)

**\*Sterling, Norman W.** (Carleton PC)

Sullivan, Barbara (Halton Centre L)

Sutherland, Kimble (Oxford ND)

Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)

*\*In attendance / présents*

#### **Substitutions present/ Membres remplaçants présents:**

Elston, Murray J. (Bruce L) for Mrs Sullivan

Hayes, Pat (Essex-Kent ND) for Mr Paul Johnson

Hope, Randy R. (Chatham-Kent ND) for Mrs MacKinnon

Malkowski, Gary (York East/-Est ND) for Mr Sutherland

Mammoliti, George (Yorkview ND) for Mr Dadamo

Offer, Steven (Mississauga North/-Nord L) for Mr McClelland

Tilson, David (Dufferin-Peel PC) for Mr Villeneuve

White, Drummond (Durham Centre ND) for Mrs Mathysen

#### **Also taking part / Autres participants et participantes:**

Platt, Priscilla, legal adviser, freedom of information and privacy branch, Management Board of Cabinet

**Clerk pro tem / Greffière par intérim:** Manikel, Tannis

**Staff / Personnel:** Swift, Susan, research officer, Legislative Research Service



CASON  
X-261  
-120

M-18



Convention  
Publication

M-18

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 4 May 1994

# Journal des débats (Hansard)

Mercredi 4 mai 1994

## Standing committee on the Legislative Assembly

Subcommittee report

Committee business

Draft report  
Freedom of information

Chair: Ron Hansen  
Clerk: Lisa Freedman

## Comité permanent de l'Assemblée législative

Rapport de sous-comité

Travaux de comité

Rapport préliminaire  
Accès à l'information

Président : Ron Hansen  
Greffière : Lisa Freedman



50th anniversary

1944–1994

50<sup>e</sup> anniversaire

### **Hansard is 50**

Hansard reporting of complete sessions of the Legislative Assembly of Ontario began on 23 February 1944 with the 21st Parliament. A commemorative display may be viewed on the main floor of the Legislative Building.

### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats a 50 ans**

Le reportage des sessions intégrales de l'Assemblée législative de l'Ontario, fait par le Journal des débats, a commencé le 23 février 1944 avec la 21<sup>e</sup> législature. Une exposition pour marquer cet événement est étalée au premier étage de l'Édifice du Parlement.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'Index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.





## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Wednesday 4 May 1994

Mercredi 4 mai 1994

The committee met at 1551 in room 151.

## SUBCOMMITTEE REPORT

**The Chair (Mr Ron Hansen):** I bring to order the standing committee on the Legislative Assembly. I'm going to report on the subcommittee meeting we had. The subcommittee recommends the following:

(1) That the committee seek permission from the House leaders to travel to New Orleans for the National Conference of State Legislators.

(2) That the committee submit a budget to the Board of Internal Economy in the amount of \$16,800 to cover accommodation, and that registration expenses be covered by the committee budget.

It was recommended by the subcommittee that members who were to travel would cover their own expenses—the cost of the flight is approximately \$400, and you would cover your own meals—so that going would be open to all members of the committee.

**Mr Jim Wiseman (Durham West):** Do that again.

**The Chair:** The subcommittee decided that it would pay registration and accommodation and that members would pay their own expenses travelling to and from New Orleans and their meal expenses.

**Mr Norman W. Sterling (Carleton):** It's either that or nothing.

**Mr Noble Villeneuve (S-D-G & East Grenville):** The last time I was on one of these it was in Indianapolis, and by the time we came back, Peterson had called an election.

**Mr Wiseman:** Don't count on Bob doing the same thing.

**The Chair:** Any other comments?

**Mr Randy R. Hope (Chatham-Kent):** Do you have to be a permanent member of this committee?

**The Chair:** Are you a member of this committee? Well, it looks like you're subbed in anyhow.

**Mr Wiseman:** What would be the total bill? Any idea?

**The Chair:** Maybe the clerk can give us some other figures.

**Mr Sterling:** The \$16,000 is based on how many members, Lisa?

**Clerk of the Committee (Ms Lisa Freedman):** The \$16,800 is based on 14 people going. It would be 12 committee members, the clerk and the researcher. It's eight nights' accommodation, which would get us there the night before and take us right through to the end, at

about \$150, the Canadian equivalent of the US\$110 for rooms. The registration fee is US\$275 per person.

**The Chair:** And the flight is approximately \$400.

**Mr Sterling:** Which would be the responsibility of the individual member who would go. It's my feeling that there is absolutely no way anybody would be able to go to this conference if we include everything. The only way they're going to be able to justify it, in terms of the public perception, is if the member picks up part of the expense for himself or herself, rightly or wrongly.

**The Chair:** All in favour of the subcommittee's report on this? Opposed? No opposed.

## COMMITTEE BUSINESS

**The Chair:** There's also a letter in front of you from the Speaker of the House. He would like to meet with the subcommittee to discuss these matters in further detail, if that would be acceptable to the committee. I'm going to have research take a look at other jurisdictions in terms of this particular area.

**Mr Sterling:** When we were talking about this in the subcommittee, it's a really narrow issue the Speaker's asked us about; that is, there's this unseemly race to the Speaker's chair to defer a vote. I think everybody in the Legislature, in all parties, agrees it's not a process which is pretty or adequate at this time, and the Speaker has asked us to resolve it.

In the subcommittee, our researcher, Mr Sibenik, indicated he had done a bit of preliminary research on the House of Commons, from where this rule arises. If we could hear how they are dealing with that, we may be able to come to some conclusion. I don't think it requires extensive consultations or deliberations to come to some conclusion. I think we're quite flexible on it. All we want is to have something definitive to go back to the Speaker with. Maybe Mr Sibenik could at this time summarize what they do at the House of Commons to resolve this kind of problem.

**Mr Peter Sibenik:** I have done some preliminary research, as indicated, and it seems to me that our standing order 28(g) is fairly similar to standing order 45(5)(a) of the House of Commons. Perhaps I can just read that into the record. It's a fairly lengthy one, but I'll read the salient extracts. It says:

"While the members are being called in," and this is for the purpose of a 30-minute vote, "either the chief government whip or the chief opposition whip may approach the Speaker to request that the division be deferred, in which case the Speaker shall defer the said division until a specified time, but in any case not later

than the ordinary hour of daily adjournment on the next sitting day thereafter."

That's the essential part of standing order 45(5)(a) of the House of Commons. I believe our standing order 28(g), which was passed by the House in 1989, was drawn from this particular standing order.

From my communications with some of the staff at the House of Commons, it has been brought to my attention that the request up at Ottawa is typically oral and is submitted by the whip. It is not all that often in writing. Usually the whips will agree among themselves about when the deferral is going to occur, and the Speaker just accepts that at face value.

There has never really been a situation where there's been more than one of these requests been submitted at the same time. However, I am advised that if such a situation did arise, the Speaker would probably accept the first of these deferral notices. However, as I say, there's no definitive precedent on record.

With respect to the issue of "specified time," I am still reviewing the precedents on that particular expression, which appears in both the standing orders, ours and theirs, but it seems to me that in most situations it is to an am or a pm time, although I will say that in their standing order it says "not later than the ordinary hour of daily adjournment," whereas in our standing order it refers to "not later than 6 pm on the next sessional day." There is a bit of a distinction there.

That basically is the sum total of the research I've done to date.

**Mr Wiseman:** It seems to me that this can be solved relatively easily. If I might just throw this out, the order of acceptance should be based on government, opposition, third party. If there are three, then it would be done on the basis of the government whip having his forward. If the government doesn't have one and the other two parties do, it would be done on the basis of which one in that hierarchy of order they are presented. That would be the order. If there are three, it's government. If there are two, it would be opposition. If there's one, it would be whoever put it in.

**Mr Villeneuve:** Did I get you right, Mr Sibenik, that you say that in Ottawa it's an oral request?

**Mr Sibenik:** In most situations, I'm advised, it is an oral request, that's correct.

1600

**Mr Villeneuve:** And it has to be from the whip or the acting whip or a deputy whip, or can it be from anyone?

**Mr Sibenik:** I have a few precedents that tend to suggest it can be from other than the chief whip, whether it's opposition or government. That is their practice. I've seen one that says "acting or assistant whip." It's perhaps a little different from our situation here, I'm not sure the precedent is parallel to ours, but that's their practice.

**Mr Villeneuve:** What we're trying to avoid is the foot race. At one point the question came up that someone with the paper was not sitting in his proper, assigned seat, that he sat next to the Speaker in order to be closer. Is this recognized? It's technical, but that's the problem. How do we avoid a race?

**Mr Wiseman:** I just gave you an idea.

**Mr Villeneuve:** That's one idea. The other one—you know, there still could be a race.

**Mr Wiseman:** No, it's not necessary. You don't need a race. Even if all three parties put one in, it doesn't matter who got there first. The hierarchy of choice is based on government, opposition, third party—or independent, I don't know. That's the hierarchy of choice.

**Mr Villeneuve:** And we'll have to stay with a certain limit, "no later than." I gather we're staying with that limit of no later than the next day within the working hours of the Legislature.

**The Chair:** Before 6 o'clock.

**Mr Villeneuve:** The other question is in terms of a specified time. Is "after regular proceedings" or "just prior to regular proceedings" a specified time?

**Mr Sibenik:** My correspondent tells me that usually it is to an am or a pm time. On the other hand, I've been taking a look at some of the precedents from the Hansard of the House of Commons, and it tends to suggest that there really isn't any specified time. It will just say "to a later time." That's what appears in the record in the House of Commons.

It could indicate a very specific time, an am or pm, but it doesn't indicate that on the face of the record. If there's further research that needs to be done on that particular score, I can do that if the committee wishes me to do that.

**Mr Villeneuve:** There was a discussion point as to what is a specified time. A member argued that a specified time would be not pertaining to "just prior to orders of the day" or "just subsequent to orders of the day," but a specified time like 3:30 pm or 5:45 pm.

**Mr Sibenik:** The Speaker ruled on that particular point and said that the practice in our House has been—it can be, for example, 3:30 pm or "after routine proceedings," something of that nature.

**Mr Villeneuve:** We'll have to clarify that.

**Mr Sterling:** The problem that arises is that it becomes embroiled in the other standing orders. For instance, if the government House leader is moving towards closure—it is a requirement of the government to have three days of second reading on a bill, and that particular bill has to be called as the first order of the day, so if you get into orders of the day and the first part of business is the vote, then you've knocked that day out in terms of the government moving towards closure on that particular matter.

There can be other machinations involved in this. In other words, the House leaders or the whips or the parliamentarians can be crafty in how or where they put this. It can be part of the game that we play from time to time in the Legislature.

In my view, another suggestion, other than the one Mr Wiseman puts forward in terms of picking priority just on the basis of party, is that the whole idea of the rule was to give each of the parties the opportunity to postpone a vote when it was going to be difficult to muster the troops that day. It only becomes a problem when there



isn't agreement between the whips, and we've run into that a number of times. But if you go back to the original philosophy or the original reason for the rule, that is, to allow an accommodation in our process, a little bit of flexibility in our process, surely the idea of the rule is to allow a significant amount of time between when the vote is called and when in fact you vote.

My view is that what happens should not be on the priority of party, but should be on the basis of when that particular time is specified in the motion, and the later time should be the time that is accepted by the Speaker. In other words, if party 1 says, "The vote shall be at 3:15," and party 2 says, "It will be at 4:15," and party 3 says, "It shall be at 5:45," it's 5:45. It's just a suggestion. The advantage of that is that I think there's less opportunity to play with the process.

**Mr Gilles E. Morin (Carleton East):** I'm sorry to be late. I was just told there was a debate on this issue.

I wonder if it would be possible to have the support of the committee to defer this debate to a bit later on, because when the Speaker announced he would ask this committee to look into the issue, I started to do some research. Unfortunately, I'm not through with it. Also, I've asked the help of the research staff to give me some advice. I find it's a bit too soon. You might want to give us a chance to look deeper into it so we can come up with something really significant, something we can all debate and then make a recommendation.

I was under the impression that we were to debate something else, and that was not the case. Apparently there was a decision to do it differently.

If there is unanimous consent, perhaps we could come back. We'll give you all the ammunition you want to discuss it, so you have something concrete in front of you. I think a lot of us did not do our research well, and I'd like to do mine well so I can come out with something which is significant.

**The Chair:** What is the feeling of the committee? Agreed?

**Mr Paul Wessinger (Simcoe Centre):** I certainly would agree. Some people might want to make some comments, though, before we do adjourn the debate on it.

**Mr Hope:** Some of us have opinions we'd like to express. I mean, everybody wants to do a lot of research. The definition of "specified time" has already been given by past practice in this Legislature. "Specified time" was following routine proceedings. That becomes the specified time.

The definition you're looking for in 28(g) is dealing with the words "specified time." Definition is determined by practice. In any proceedings in any adjudication, when there is a lack of definition, you find that the definition is given by past practice. Past practice has given the definition that "following routine proceedings" becomes the specified time; 5:45 becomes the specified time. As to definition of time, it's already been given, and I don't know where the argument is about specified time. Past practice has given that.

As to the issue of when there's more than one, which one comes first, I would agree with the way Jim had put

it forward: If there were three put forward, then the government's would come first. If there were two from the opposition parties, the official opposition's would go first. If there was one, then there's not a problem.

Looking at what was directed to us on the question of specified time, which was raised on a point of order, because it is not defined in the piece of legislation it's already been decided what "specified time" is. Specified time can mean after routine proceedings and it can mean a definite time of the clock. It's already been determined what "specified time" is, and I wouldn't want to change the practice that's already been given. The Legislature has already determined what "specified time" means by past practice.

The issue around which one would come first isn't in there, and I would concur with what Jim put forward respecting that. It seems like it's becoming not whether somebody is unable to get the troops up for the vote, but, "When do we want this vote to happen so we can move the legislative calendar around for that day?" That seems to be the issue, versus what Norm explained about not being able to muster the troops for a vote.

1610

**Mr Michael A. Brown (Algoma-Manitoulin):** The reason this rule exists, in my view, is for occasions where the House leaders have not come to any agreement upon how the House will be ordered, or where the House leaders are somewhat surprised by something that happens: a rather sudden turn of events, and a vote that happens that really wasn't expected at that time.

It seems to me that the government is the one that should be most interested in knowing when votes are. In my experience, oppositions have rarely fallen in a parliamentary democracy. Governments do. So it's the government that has the most interest, although opposition parties also have an interest, in being able to get its people there and have its people know.

My suggestion, for what it's worth, is relatively simple. If there is more than one request, the time should be at 5:45 the following day. The Speaker then, if he has more than one request, would automatically know the ruling will be 5:45 the next day. That will give the government a chance to assemble its members, it will give the opposition parties an opportunity to have theirs there, and that's what this is about. It would seem very straightforward. That's my view of how this should happen.

I'm reluctant to follow the suggestion that the government gets to decide what time the vote is. I don't think that's fair to the opposition parties, and the Speaker's role often is to protect the minority in Parliament. It seems to me that giving the government first priority in this is a mistake. It may be just as much a mistake to give the official opposition the priority. That's why I favour having it at 5:45 if there is any dispute in terms of what time the vote will be taken the next day. I think that's perfectly logical, and that would be my personal advice about how we might proceed.

**Mr Wessinger:** Mr Sterling has raised the issue here that the problem with the foot race really has nothing to do with the deferral time but rather with the gamesman-



ship with respect to the other rules. I think he zeroed right in on the problem. I'd like to come up with a solution that will take it out of the gamesmanship so there's no gamesmanship aspect with respect to the issue. If we come to a conclusion in that way, I think it would be an easy solution, once we've taken it out of the area of gamesmanship.

If there's no advantage to either party in particularly trying to specify a time, I think that would be the best solution. With that in mind, I'm directing it to the researcher, that any suggestions and options he's looking at would be how to ensure that nobody can gain any particular advantage by getting a different time.

**Mr Sterling:** Quite frankly, I think what we should do is just take the three or four suggestions we've had so far and throw them at the House leaders, and that would be the end of it. They're going to negotiate this with their own self-interest in terms of playing the rules. Therefore, it doesn't really matter whether we all vote for Jim Wiseman's suggestion or Mike Brown's suggestion or my suggestion; they're going to negotiate it and figure out how important it is to them.

I don't think this is an earth-shattering rule and I don't think it's an earth-shattering problem. I think there are a lot more serious problems with our standing orders than this particular matter. So that's the way I'd like to deal with it. We've had, in my view, adequate discussion. I don't think any more research is necessary. I think we should just put forward Mr Wiseman's suggestion, my suggestion, Mr Brown's suggestion and say: "Take your choice. Negotiate it." That's the way the standing orders are eventually done: Either they negotiate a deal or the government comes in with a heavy hand and does it. As I say, I just don't think the rule is that important to spend a lot of time on it.

**The Chair:** I know it's important to the two Deputy Speakers who are sitting next to you, because I think someone had two people sitting on their laps one day.

**Mr Morin:** I don't think it's the House leaders' prerogative to decide. It's for the House to decide; it's for us to decide. It's our decision. It's our privilege. The more information we give to the House leaders, the more informed they will be, and then perhaps they will be able to arrive at a decision which is done on a friendly basis and not "Give me this, and I'll take that"; it doesn't become a negotiation. I think it should be information we bring to them and that they use common sense, just straight common sense.

This is why I would ask again if there is a possibility of deferring this meeting to another date. Give us a chance to do some proper research so we can come to a conclusion which is not political, which is simply good common sense, and also prepares the ground for the Speakers in the future.

**The Chair:** The committee has decided to defer this, but I think it's important that some of the remarks coming from the committee members, if you want to do more research—

**Mr Wessenger:** Mr Chair, you're assuming that's the consensus agreement. Mr Sterling doesn't agree.

**Mr Morin:** That's right. That's why I say that.

**Mr Wessenger:** If that was a motion from Mr Morin, I certainly would support that motion to defer.

**The Chair:** All those in favour of the motion?

**Mr Wessenger:** Is it a motion?

**Mr Morin:** I move that the debate on the issue we're debating be deferred to a further time that we decide upon.

**Mr Hope:** I understand where Gilles is coming from. He's trying to deal with this with common sense, and I thought we would do that. But my question is, how long will we take? Are we going to deal with this next week? Are we going to deal with it another week from now?

My understanding is that what you're trying to discover is two issues: (1) "specific time" and (2) dealing with which one comes first. Understanding what you're trying to bring across, I just want to know what time frame we're dealing with.

**Mr Morin:** Next week, and then we'll look at the whole section, not only at one specific issue. We'll look at the whole thing.

**Mr Hope:** What do you mean, the whole thing?

**Mr Morin:** We'll look at the whole section, 23(g).

**Mr Hope:** Which is what we've been directed to do.

**Mr Morin:** That's right.

**Mr Wiseman:** If this becomes a dragged-out thing we might want to recommend to the Speakers to use the hierarchy approach to determine it in the interim, and that that wouldn't be a final decision. No. First come, first served, eh? Another race to the Speaker's chair?

**Mr Drummond White (Durham Centre):** I agree very strongly with Mr Morin. I think he has a very good point, that we should be making some informed decisions and offering some suggestions about this issue. I just want to be sure that the intent of the motion that that be what we do, that we come to an informed decision and would then respond back to the Speaker, so in a sense, following Mr Morin's suggestion, we're taking this in our hands.

**Mr Sterling:** Common sense says to me we deal with it now. Whether you like it or not, what happens in these things is that the House leaders do negotiate what will happen in the standing orders, and the parties stand behind their House leader in terms of their argument. We discuss it in caucus. That's the way the standing orders have for ever been determined here.

For us to spend another afternoon, in my view, on this matter doesn't make any sense. The issue isn't that big. To avoid another afternoon, I'm quite willing to accept what has been ruled by the Speaker in terms of time. I'm quite willing, personally, to accept Mr Wiseman's suggestion that a hierarchy be established. I just don't think it's that important that we drag this issue out. But I'm in the hands of the committee. If you want to research this matter and deal with it at length, that's fine.

**Mr Villeneuve:** This committee is the Legislative Assembly committee, and it is incumbent on and the responsibility of this committee to formulate the rules. If we turn it over to the House leaders, I think we've



abrogated our responsibilities. We've been asked by the Speaker to clarify. I'm quite prepared to wait an extra week. Jim Wiseman's suggestion is probably a good one; it may be one of a couple of alternatives we'll have. I'd like to see an alternative. I have no problem with what you've suggested, but I'd like to see possibly another jurisdiction.

**Mr Brown:** I have no problem with the deferral, although I have a lot of sympathy for what Mr Sterling says. But in deferring it, I don't think we're changing anything, Mr Sterling, in that I don't think the House leaders are going to deal with it in the interim anyway. I think whatever advice we could get on what other jurisdictions happen to do may be useful, and in the meantime we could all perhaps give a little more thought to alternatives.

But having said that, it will probably still, regardless of what we think, be negotiated at House leaders. But our advice, if it's good advice, may be accepted. I don't have a problem voting for the deferral. I just don't think it changes very much.

**The Chair:** All those in favour of the motion to defer till next week? Opposed? Two opposed. Carried.

DRAFT REPORT  
FREEDOM OF INFORMATION

**The Chair:** The next item on the agenda is the freedom of information draft report, which was handed

out. Does everybody have a copy? Do you want to have an open session or a closed session on this? The last time we were discussing it, Hansard had quite a problem trying to keep track of section this and section that.

**Mr Sterling:** I don't care whether Hansard keeps it. If you want to dismiss Hansard, that's fine and dandy. I just don't think we should restrict anybody from coming in the room when we're talking about freedom of information.

**The Chair:** No, it's just that we'll allow Hansard to be dismissed. Anybody opposed?

**Mr Mike Cooper (Kitchener-Wilmot):** No. The problem is that we're just doing a draft report, and it's just like negotiations. When something gets released when it's halfway done, people have expectations.

**Mr Sterling:** Are we still going to have electronic Hansard on? I mean, if people want to watch us?

**The Chair:** Yes, they can watch it.

**Mr Wiseman:** Let them watch.

**Mr Villeneuve:** No problem there.

**Ms Pat Girouard:** There's no chance that you're going to want Hansard to come back at any point this afternoon?

**The Chair:** No. This would be the last item we have. The committee continued in closed session at 1623.

## CONTENTS

Wednesday 4 May 1994

<b>Subcommittee report</b> .....	M-295
<b>Committee business</b> .....	M-295
<b>Draft report: Freedom of information</b> .....	M-299

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

**\*Chair / Président:** Hansen, Ron (Lincoln ND)

**\*Vice-Chair / Vice-Président:** Wessenger, Paul (Simcoe Centre ND)

Dadamo, George (Windsor-Sandwich ND)

Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)

MacKinnon, Ellen (Lambton ND)

Mathyssen, Irene (Middlesex ND)

**\*McClelland, Carman** (Brampton North/-Nord L)

**\*Morin, Gilles E.** (Carleton East/-Est L)

**\*Sterling, Norman W.** (Carleton PC)

Sullivan, Barbara (Halton Centre L)

Sutherland, Kimble (Oxford ND)

**\*Villeneuve, Noble** (S-D-G & East Grenville/S-D-G & Grenville-Est PC)

*\*In attendance / présents*

### **Substitutions present / Membres remplaçants présents:**

Brown, Michael A. (Algoma-Manitoulin L) for Mrs Sullivan

Cooper, Mike (Kitchener-Wilmot ND) for Mr Paul Johnson

Hope, Randy R. (Chatham-Kent ND) for Mr Dadamo

White, Drummond (Durham Centre ND) for Mr Sutherland

Wiseman, Jim (Durham West/-Ouest ND) for Mrs MacKinnon

**Clerk / Greffière:** Freedman, Lisa

### **Staff / Personnel:**

Girouard, Pat, Hansard Reporting Service

Sibenik, Peter, research officer, Legislative Research Service





ONTARIO. LEGISLATIVE ASSEMBLY. HAN  
J 108 H22 SIN: 0041087  
Vol: 3RD S Iss: 35TH P MY94  
Loc: REF ISSN:  
ERINDALE COLLEGE LIBRARY (EQ)

M-19

M-19

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 11 May 1994

# Journal des débats (Hansard)

Mercredi 11 mai 1994

Standing committee on  
the Legislative Assembly

Comité permanent de  
l'Assemblée législative

Deferral of division

Report des mises aux voix

Chair: Ron Hansen  
Clerk: Lisa Freedman

Président : Ron Hansen  
Greffière : Lisa Freedman

*50th anniversary*

*1944–1994*

*50<sup>e</sup> anniversaire*

### **Hansard is 50**

Hansard reporting of complete sessions of the Legislative Assembly of Ontario began on 23 February 1944 with the 21st Parliament. A commemorative display may be viewed on the main floor of the Legislative Building.

### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats a 50 ans**

Le reportage des sessions intégrales de l'Assemblée législative de l'Ontario, fait par le Journal des débats, a commencé le 23 février 1944 avec la 21<sup>e</sup> législature. Une exposition pour marquer cet événement est étalée au premier étage de l'Édifice du Parlement.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'Index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.





## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Wednesday 11 May 1994

Mercredi 11 mai 1994

The committee met at 1536 in room 151.

## DEFERRAL OF DIVISION

**The Chair (Mr Ron Hansen):** The standing committee on the Legislative Assembly will come to order.

The first item this afternoon is a discussion of standing order 28(g). Today we have Deborah Deller, from the Clerk's office. Welcome to the committee.

Mr Morin, would you like to start? I believe you have a paper you've written, or you have more information than we had last week.

**Mr Gilles E. Morin (Carleton East):** Do you want to distribute the presentation I've prepared?

**The Chair:** Has anyone else any other papers they've prepared since the last meeting?

**Mr Jim Wiseman (Durham West):** Put it on a computer. Why put it on paper? There goes another tree.

**The Chair:** Some people can't remember everything, so we have to write it down.

**Mr Morin:** I'm very interested in speaking to the committee on this issue since, as members may recall, I happened to be in the chair on both occasions when difficulties arose out of a receipt of two letters of deferral at the same time.

In my view, it is not a fair position in which to put the occupant of the chair. A race to the chair with a deferral letter is unacceptable. It is undignified conduct that is not appropriate to the chamber. This lack of respect for the Chair and for the House only serves to foster lack of respect for ourselves and each other as members of the provincial Parliament.

As the Speaker indicated in his ruling of April 27, it is obvious that the practice of accepting the first deferral letter received is not one that is working and is one that must be changed.

This committee has by tradition been the legislative body that has had the responsibility of resolving matters of procedure, and I believe it is important that it take seriously its mandate in this regard and develop a resolution to this problem that is agreed to by all sides.

With this in mind, I would like to put forward a proposal for the consideration of the committee.

At the outset, it is necessary to remind ourselves that the standing orders are only one component of parliamentary procedure. It is also necessary to consider our practices and precedent. In addition, whenever possible, the standing orders should be considered in light of their original intent.

It is important, then, to review the intent of standing

order 28(g). I think it is fair to say, without qualification, that this standing order was written with the express purpose of providing all parties with the opportunity to defer some votes to the next day in order to prevent, as far as possible, surprise divisions and to allow each party whip to ensure the attendance of his or her members.

It is clear that this standing order was never intended to be used as a tool for delaying the business of the House, or for causing a disruption, or harm to the Speaker.

The task before us is to determine a fair and clean method of deferring votes that preserves the intent of the standing order and prevents obstruction of House business, whether it is government or opposition.

In my opinion, after discussion with several of my colleagues, the most simple and fairest solution would be to establish a fixed time during the day when deferred votes may be taken. Since the objective is not to interfere with the business of the House, the most practical time would be during the routine proceedings. The addition of an item to routine proceedings called "Deferred votes" would mean that the Speaker would call the item as he does any other item of routine proceedings. If any vote has been deferred from the previous day, it would be taken at that time. This would prevent a race to the chair with deferral letters, since there would be an established segment of the agenda of the House devoted to such deferrals.

This would also negate the need for a discussion of the words "specified time" in that same standing order, as the time would no longer need to be indicated in the deferral letters.

I have given some further thought to when deferred votes should take place during routine proceedings, and find that the most appropriate place would be prior to question period. To clarify my reasoning, I draw your attention to standing order 45(a), which states:

"Motions to adjourn the House or the debate may not be moved until after the oral question period except upon unanimous consent of the House. Such motions do not require notice."

In several rulings, dating from April 1990 to the present, this standing order has been applied to a motion "that the House do now proceed to orders of the day." If deferred votes were to be scheduled after question period, they may be superseded by an adjournment motion or a motion to proceed to orders of the day. In such circumstances, the deferred vote may never be taken, which of course is not what the House would want. This proposal



any kind of agreement from the House or changing the standing order? I would just say that there are some resolutions that you might consider that would not require a change to the standing order or a waiver of the standing order. There are some resolutions that would at least require the agreement of the House for the Speaker to proceed in that manner. This is one of them that would require the agreement of the House.

**Mr Wessenger:** If there are other options that don't require an amendment of the House rules, maybe we should hear them, even though we as the members of the committee would like to proceed in this way, so we have a secondary position and know what we can do if the House doesn't agree with the recommendation of our committee.

**Ms Deller:** Could I just respond to the second part of what Mr Wiseman had commented on? You made some reference to a proposal you had put forward.

**Mr Wiseman:** Yes. Last day, I suggested that the Speaker would have to accept the deferral motion on the basis of parties, that the government party, if it put in a deferral, would have its considered first, then the opposition, then the third party, and it wouldn't matter when they got there. If they all came at the same time, that would be the pecking order of the choice the Chair would make. Would that require an amendment of the standing orders, or would there be some way of doing this that we didn't have to debate in the Legislature about this?

**Ms Deller:** In my opinion, the Speaker could probably make that decision on his own, that that's how he would determine which deferral letter to accept, basing that decision on the recommendation of this committee. I do, however, see some difficulties with that particular proposal. It would seem to me that the very first problem is that the Speaker would have to let the bells ring for the full 30 minutes in order to ensure that he allowed every party whip to present him with a letter.

1600

In other words, if, using your suggestion, the Speaker were to receive a letter from the whip of the third party within two minutes of the bell ringing and he stopped the bells and said, "I have a letter from the whip of the third party asking that this vote be deferred until 5:45 tomorrow," and the chief government whip stood up and said: "Wait a minute, Speaker. I was standing at the bottom of the dais. I have a letter for you as well"—now do you see the problem? The bells have stopped; the Speaker has already accepted one and there's another whip whose letter would take priority normally, who had not been given the opportunity to hand his letter to the Speaker, because in effect what the Speaker has done is taken the first letter he has received.

**Mr Wiseman:** But the Speaker then could say: "I have one letter of deferral. Are there any others?"

**Ms Deller:** How does the Speaker do that when the bells are ringing to call the members in for a vote? Suppose the whip of the government party had gone out to gather up his members and, for one reason or another, has determined that this is not a good time for the vote during that time and he'd better get a deferral letter to the

Speaker, and he happens not to be in the House at the time the whip of the third party hands the Speaker a letter and says, "This vote shall be deferred until the following day."

**Mr Wiseman:** Then I would say it wouldn't be as pressing as the two examples we have, where people were practically beating down the Speaker to get to him.

**Ms Deller:** It may not be as quick a race. My opinion is that it would still be a race.

**Mr Wiseman:** But in today's example, under the current rules, as soon as the Speaker received the motion from the third party, that would be it, so there wouldn't be an option to look at any others. What I'm saying is that if there are three people beating away to get to the Speaker and they have that kind of pressing need to be there—why, we don't know—then the Speaker just collects all three and takes the government one and away you go. Under other circumstances, if the Speaker is standing there and the third party comes up and gives him one and there's nobody else even motioning in that direction, that would seem to me to be the one the Speaker could take.

**Mr Wessenger:** Mr Morin, could I ask you a question about your proposal? I really like your proposal. I think it's very simple. What if we were to support your proposal with one proviso, that is, that we ask the House leaders to determine whether the appropriate time would be immediately before question period or immediately after question period?

I'm thinking the whips or the House leaders might prefer one time over another. If we left that in our recommendation, that it would be within routine proceedings, either immediately before question period or immediately after, and left it up to the House leaders to agree on the time, would that be agreeable?

**Mr Morin:** I think I pointed out what would be the problem if it was after orders of the day: One could supersede the other. That is the concern. You see, the idea of this is to make it as simple as possible so that you don't leave any opening whatsoever for anyone to play a game, so that we proceed with our business as swiftly as possible. That is the purpose of it all.

We still keep the same privileges as we had before, except that we know "specified time" will never be criticized again, because it's within routine proceedings. The vote is taken. The whip also will have the opportunity of having more people in the House than there would be, for instance, at a certain time of the afternoon. I wonder if you recall one day in private members' business when there was no quorum and your poor whip was running all over the place to try to fill the House. Do you remember that? I had to adjourn the House. This is what Ms Deller was pointing out a minute ago. The whip may be away; he may not have time to come in and deliver his letter.

We don't want to create problems; we want to make it simple. I think this is a way of doing it. Mind you, we make our recommendation to the House, but it's up to us. We decide whether we want it. If this is the recommendation we bring to the House, it's for the House to decide,



but I strongly feel it will work extremely well and make it simple.

**Mr Wessenger:** I don't know if it would be premature to have a motion on this, but I'd be prepared to make a motion that we approve Mr Morin's proposal and recommend it to the Legislature.

**Clerk of the Committee (Ms Lisa Freedman):** I'd just like to clarify one thing. What this committee is going to have to do is report back to the House, so we're actually going to have to write a report. If the committee decides to recommend this, would you want the researcher to rework this in terms of a one- or two-page report that's stating the will of the committee?

**Mr Wessenger:** Yes.

**Clerk of the Committee:** Okay. And would you want that to come back to the committee next week, or for me to send it out, if I get it tomorrow, so that we can approve it, or to delegate it to someone to approve? Just logistically, do we want to come back next week?

**Mr Wessenger:** I think you can delegate it, yes.

**Clerk of the Committee:** So I'll get one member from each party to look at the report once it's written?

**The Chair:** Mr Wessenger, you'd be the body from the government?

**Mr Wessenger:** Yes. I won't be available tomorrow, but some other day.

**Mr Sutherland:** We probably won't have the report done by tomorrow.

**Mr Wessenger:** Certainly next week, I'd be happy to look it over.

**The Chair:** Any more discussion on the motion? All in favour of the motion? All opposed? It looks like it's unanimously passed. Thank you, Mr Morin. After the subcommittee approves it, can I report it to the House? Fine.

If there's no further business, we can adjourn.

The committee adjourned at 1607.

## CONTENTS

Wednesday 11 May 1994

Deferral of division ..... M-301

### STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

**\*Chair / Président:** Hansen, Ron (Lincoln ND)

**\*Vice-Chair / Vice-Président:** Wessenger, Paul (Simcoe Centre ND)  
Dadamo, George (Windsor-Sandwich ND)

**\*Johnson, Paul R.** (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)

**\*MacKinnon, Ellen** (Lambton ND)

**\*Mathysen, Irene** (Middlesex ND)

McClelland, Carman (Brampton North/-Nord L)

**\*Morin, Gilles E.** (Carleton East/-Est L)

Sterling, Norman W. (Carleton PC)

Sullivan, Barbara (Halton Centre L)

**\*Sutherland, Kimble** (Oxford ND)

Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)

*\*In attendance / présents*

**Substitutions present / Membres remplaçants présents:**

Wiseman, Jim (Durham West/-Ouest ND) for Mr Dadamo

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** Sibenik, Peter, procedural clerk (research), committees branch, Office of the Clerk



CA20N  
XC20  
- L20

Government  
Publications



M-20

M-20

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 18 May 1994

# Journal des débats (Hansard)

Mercredi 18 mai 1994

## Standing committee on the Legislative Assembly

Draft report  
Municipal Freedom of Information  
and Protection of Privacy Act

## Comité permanent de l'Assemblée législative

Rapport préliminaire  
Loi sur l'accès à l'information  
municipale et la protection  
de la vie privée

Chair: Ron Hansen  
Clerk: Lisa Freedman



Président : Ron Hansen  
Greffière : Lisa Freedman

*50th anniversary*

**1944–1994**

*50<sup>e</sup> anniversaire*

### **Hansard is 50**

Hansard reporting of complete sessions of the Legislative Assembly of Ontario began on 23 February 1944 with the 21st Parliament. A commemorative display may be viewed on the main floor of the Legislative Building.

### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats a 50 ans**

Le reportage des sessions intégrales de l'Assemblée législative de l'Ontario, fait par le Journal des débats, a commencé le 23 février 1944 avec la 21<sup>e</sup> législature. Une exposition pour marquer cet événement est étalée au premier étage de l'Édifice du Parlement.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'Index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.





## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Wednesday 18 May 1994

Mercredi 18 mai 1994

The committee met at 1601 in room 151.

DRAFT REPORT  
MUNICIPAL FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY ACT

**The Chair (Mr Ron Hansen):** We'll bring the committee to order. Maybe Susan can start off and remind all of us where we were and bring us back to reality.

**Mr Murray J. Elston (Bruce):** Could you recap, please?

**Ms Susan Swift:** I'd love to. Let me start at page 1. The last time the committee met, we were considering how we would go through the report. There were several options that were on the table. One of them was to go through page by page. Another was to go directly to the recommendations and go through them chronologically. A third would be to go to what were called the controversial issues, those being the issues where the committee had asked me to simply discuss them and prepare options for your consideration.

I'm in the hands of the committee as to how you want to proceed, to go through the report. Maybe there's another option; I don't know.

**Mr Elston:** I don't have concern moving through this page by page. In reading it, it falls fairly straightforwardly in that fashion. I think there are a couple of places where we go back and forth to items, where there's a slight repetition perhaps in the text, but I rather think we'll start at the beginning of the report and move forward that way. We'll come to the option situations and we'll be able to endorse the recommendations as written or otherwise. I think that makes it fairly easy to follow.

**Mr Randy R. Hope (Chatham-Kent):** I was trying to remember all the conversations that took place last time. One of the expressed concerns that I know I was bringing out was whether this would be a partial report or a full report, because there were areas dealing with the hospitals that we felt were important that we needed to address in order for this to be a comprehensive review.

**Mr Elston:** In fact, there are some recommendations in here that basically say that we're not going to move further at this time until we have either further information for us or we will recommend having further hearings on certain items. This will be comprehensive in relation to the terms of reference, but it will still leave some avenues for us to explore more fully later on. I think the report will be full. It will be complete in the sense of the terms of reference, but it will not do all the things that we decided the hearings would lead us to do.

**Mr Hope:** Yes, I know the report is full. Sometimes

it's too full. Could you tell me what's on page 35? No. But it's full. But I think a lot of us expressed, when we began this process, to make sure that we could do as much as possible. Around the hospitals and school boards etc, I think it was really to pursue that. I thought the intent was a strong pursuit of that. I know the report covers a bit of it, but there is still time. It just helps push the committee to do that end of it.

**Ms Swift:** I was just going to interject that I think you'll find the report deals with most of the issues that came up during the hearings. The issue of the coverage of the act is dealt with in the first recommendation, and that is the one where most committee members thought that perhaps a phase 2 of the review would be completed at a later date. We could start on that page with that issue perhaps, or with that recommendation, that being the first recommendation.

If you turn to page 7 of the document, that is where the discussion about coverage of the act begins. Perhaps I can just briefly take you through it, unless the members want to take a moment and read it quietly to themselves.

**The Chair:** I think, Susan, you could guide us through it a lot easier. There are a lot of pages here.

**Ms Swift:** Okay. Beginning on page 7 then with the issue of extending coverage of the act, firstly, the introduction deals with the current situation—that is, the definition of "institution" under the act. The committee heard from a number of witnesses that there are a number of public bodies in Ontario that are either performing important public functions or receiving public funds that are not currently covered by any freedom of information statute.

The discussion then goes into the Williams commission report, which is the seminal report dealing with freedom of information in the province, and discusses the principle upon which the Williams commission recommended that certain institutions be covered by the legislation and others be excluded. The principal basis upon which institutions were included was that it should be those public institutions that are normally perceived by the public to be part of the institutional machinery of the Ontario government, recognizing that this would exclude some institutions that are receiving public funds and performing public functions. The Williams commission thought, none the less, that this was an appropriate limitation.

As I said, the witnesses before the committee, beginning with the Chair of Management Board, made some suggestions to the committee as to the possibility of

extending coverage. The Chair of Management Board indicated that coverage was an issue that had been raised with the ministry by many citizens' groups. The Information and Privacy Commission recommended specifically that the act be extended to cover hospitals, universities, social service agencies and self-governing professional bodies, on the basis that such bodies receive public funds and carry out public functions. In other words, there's a broadening now as to the basis for inclusion in the freedom of information legislation.

The third category of witnesses, if you like, that came before the committee and suggested extension were various individuals who submitted recommendations to the committee, and they urged an even broader extension of coverage to include the Ombudsman and many of the self-governing bodies in the province, including the regulatory colleges under the Regulated Health Professions Act, the law society and other agencies, boards and commissions that are not currently covered by legislation.

The committee also heard that several jurisdictions have used different bases or different criteria to determine inclusion or applicability of freedom of information legislation, and principally we heard that Saskatchewan and Quebec focus on the criterion of receipt of public funding. British Columbia uses the two criteria that have been suggested by the Information and Privacy Commissioner—that is, the receipt of public funds and also whether the body is performing a public function.

In its 1991 report, this committee recommended that coverage of the freedom of information legislation should be extended to provide greater access to more government information, and the criterion that the committee used at that time was that any organization receiving more than \$50,000 in public funds should be covered by freedom of information legislation, the rationale for that approach being that:

"The committee believes that the public has a right to follow public money wherever it may flow, regardless of whether the recipient organizations receive all or only a portion of their funding from the government, and regardless of whether these organizations are commonly viewed as institutions of government. Institutions receiving significant public funds, such as hospitals and universities, should be accountable to the public for the use of those funds."

That was the recommendation in the 1991 report.

**Mr Elston:** Can I interrupt perhaps just for a second? The \$50,000 received, was that one-time, or was that annual, or was it just that any time you received \$50,000 you're subject to—

**Ms Swift:** The committee didn't go into that. That wasn't dealt with in detail.

**Mr Elston:** But it would sound like it was a one-time receipt of \$50,000.

**Ms Swift:** I guess it could be read that way. They didn't go into it, so I'm not sure they had turned their minds to that issue.

**Mr Elston:** But the idea being that there had to be a level, a floor, from which you begin to inquire.

**Ms Swift:** That's right.

1610

**Mr Elston:** But below \$50,000 receipt, without being more specific, it would sound like even if you got a grant for the church, for instance, to build an elevator entrance, which often is \$75,000, \$80,000 or \$90,000, they technically then would be subject to freedom of information if that was a recommendation which we followed. Then we would have to specifically talk about receiving moneys of an operating or yearly amount, which I think if we were looking at that, I would highly recommend.

**Ms Swift:** That was not dealt with by the committee, but that would make sense, I think.

The committee, in its 1991 report, also recommended that coverage of the provincial act be extended to administrative and support services of the Legislative Assembly and to all government agencies.

The committee received submissions regarding concerns about access to health care records but deferred making any recommendation on that point, noting that the Ministry of Health was at that time engaged in a review of all health-related information issues as part of a proposed health care information access and privacy act. The committee heard evidence that the act, of course, hasn't materialized. There have been no further steps taken on that.

**Mr Jim Wiseman (Durham West):** We didn't really hear from the hospitals and all of these other agencies, and it seems to me that there may be difficulties that we aren't very clear on in terms of, say, a hospital being able to separate private and personal information from information that should be readily accessible. For example, if you were to try and trace the way some moneys were spent, it may be that in order to do that thoroughly, you would have to know what it was spent on.

I'm just wondering if they wouldn't have some concerns about the cost to them of doing this and whether or not it's feasible for us to ask them to do it in a way that would open it up to the public in a broad sense and allow people to get into the minutiae of the way a hospital runs. I haven't got any problem with freedom of information about administrative salary levels and things like that, but when it gets into some operations of certain floors and how much money is being spent, you could run into some problems.

I guess what I'm saying here is, before we really go too much further in terms of expanding that, it might be advisable to suggest some kind of a return or an invitation for some of those groups to come in and talk about it.

**Mr Paul Wessinger (Simcoe Centre):** It wouldn't become a recommendation in the draft report. It will be phase 2.

**Ms Swift:** Yes.

**Mr Kimble Sutherland (Oxford):** Sorry, I haven't been here for all of the discussion, but I would just point out that I think the point Jim raises is very valid. All you have to do is look at some of the responses by some of the institutions to having the Provincial Auditor come in and look at the transfer of funds from the provincial government to them and as to whether the auditor can



only look at the provincial funds or can look at, for example when you get into universities, their research grant funds or their foundation funds. There will definitely be some concern from some of those institutions.

**Ms Swift:** That certainly was my sense of what the committee wanted to see in its recommendations. That is in fact how I've drafted the recommendation for your consideration—that is, that the committee supports the principle of extending coverage of the act to provide greater access; however, “insufficient evidence has been presented to the committee with respect to the unique access and privacy needs of the proposed organizations.”

In addition, the cost implications of extending coverage not only to these institutions but also to the Information and Privacy Commissioner, what that would mean to take on those added responsibilities, was something that the committee felt it would have to examine before making a recommendation for extension to a specific body.

What I've taken from your discussions previously was that before making any recommendation for extension to a specific body, the committee would undertake additional consultations with the proposed organizations, including the public hospitals, universities, social service agencies, the Information and Privacy Commissioner, Management Board secretariat and affected ministries, groups, associations and individuals.

If you look at the recommendation at the bottom there of page 11, basically what it says is that the committee will immediately begin those consultations as phase 2 of the ongoing review that it is mandated to do under the act.

There's a spelling mistake there. In the third line from the bottom it says “the appropriations,” but it should mean “the appropriateness of extending coverage.”

**Mr Wiseman:** Do you ever spell-check these things?

**Ms Swift:** I spell-checked, but “appropriations” is spelled correctly, so it didn't catch it. You need a meaning check.

**Mr Hope:** Mine would be technical, just dealing with that “the committee immediately undertake public consultations.” How strong is that? Let's say the report is adopted by the House. How strong is the report for us to get back in here and deal with that? That's what I've been trying to come at. We would ask that we be given the appropriate time to sit again and to consider it. I just want to make it strong enough that it gets across to some people that we need to finish this off so that we can deal with this important issue. I guess that's all I'm trying to understand. When the report is put forward in the House, does the wording, “That as phase 2 of the current review, the committee immediately undertake public consultations with organizations” allow us—

**The Chair:** Could I have the clerk here, Lisa Freedman, answer, please.

**Clerk of the Committee (Ms Lisa Freedman):** We're mandated by the act to do a comprehensive review, and I think we actually wouldn't require permission from the House. This committee, before the end of 1994, has to undertake a comprehensive review of the act, and phase 2 would just be a continuation of what

we're doing. It would be within the powers of the committee to decide how it wanted to organize phase 2.

**Mr Hope:** So the power's there to get back here.

**Mr Elston:** I'd be a bit surprised, though. If somebody wanted to stop us from doing it, they could probably say, “The act is reviewed and you've made some suggestions.” I just believe that the people will want you to go ahead and do it. The minister has spoken. I think there's a lot of interest.

In fact, when I look at the recommendation, I think there are a number of people who are persuaded that there has been too long a delay in coming forward with the act on hospitals, for instance. While there may be some big problems, I think we could state much more strongly in the recommendation that we view the implementation of the Freedom of Information and Protection of Privacy Act covering hospitals and other organizations to be an essential part of freedom of information and protection of privacy in Ontario and that we wish to undertake phase 2, which would be to understand the areas of difficulty which must be overcome before the bill is introduced.

I would be much more direct on it, because even when this bill was drafted we had promises that material would be forthcoming. Nothing has happened. I think the organizations should be put on a very specific alert that we are looking not so much to whether they should be in but to find out what the problems are when they are included. I think that's a significantly different exercise than this one is, because it still sounds like we haven't really had enough information to figure out whether it should happen or not.

I gathered from when the presentations were made and from the questions that came from most of the members during the hearings that we were at the stage where we thought it was the right thing to do but we wanted to find out where the problems were. I think that, as a recommendation, might better express it. If we find during phase 2 that the problems are insurmountable in some places, then we can make a change of opinion, but I thought we were much more strongly inclined to move to implement freedom of information in those areas.

**Mr Wessinger:** Might I suggest a change in language here, to say, “The purpose of such consultation is to assess the appropriate method of extending coverage of the act”? That would certainly be very strong.

**The Chair:** Does everybody agree? I think there's another issue here too. Depending on what this committee receives from the House to address, it could change the timetable, depending on the sitting from now until the end of December. Taking a look now, it's most likely we'll get through this by the end of June. Depending on when we come back and what has been given to this committee to deal with, that could change what we're doing. Mr Hope is saying, “When do we get on with it?” I think that would be an element of not going ahead right away.

**Mr Hope:** I think Murray hit it right on the nose, to serve notice. That's exactly what we want to do, serve notice to those other bodies out there that: “Look, you're



not going to be isolated any more and you're going to be a part of it. How do you become a part of it and how do we put good legislation in place?" I guess that's what I'm trying to get at. We have to serve people notice: "You are going to be a part of it, and we're going to be coming to listen to you. Here's your opportunity, so get ready."

1620

**The Chair:** The other thing is the House leaders deciding whether this committee's going to sit, late in the fall or whatever the case may be, to address this particular problem.

**Mr Elston:** I have some persuasive capacity with those questions.

**The Chair:** I know, Murray. Any other comments?

**Mr Hope:** There was one about the method, and I have no problem with changing the words.

**Ms Swift:** I suggest that perhaps what I'll do is go back and redraft the paragraphs from the bottom of pages 10 and 11 to indicate that the committee feels these organizations ought to be covered, but it's just a question of looking at which implementation problems to overcome to extend coverage.

**Mr Elston:** It was my feeling that we were moving in that direction. The minister certainly spoke in those terms, and I think it would be the right way to express what I thought were the feelings during the hearings.

**Mr Wiseman:** I have a comment about timing on this. I don't think we should concern ourselves so much about the timing in terms of whether we're going to come back to this as we should about sending in a report that we think should go there, with the recommendations we think should be followed up on. Leave the timing to others to worry about.

**The Chair:** But the committee would have to talk to the three House leaders about this committee sitting at that point. I don't think there's any problem with agreement, but that's what we have to take a look at down the road.

**Mr Hope:** Maybe we can sit in the winter and go to Jamaica or something to do proper hearings.

**Mr Wessinger:** Of course the members would have to pay that themselves.

**Mr Elston:** The Legislative Assembly is still not subject to freedom of information? Is that correct?

**The Chair:** Anything else there, Susan?

**Ms Swift:** No. Moving on to the bottom part of page 11, dealing now with the first part of the act, the freedom of information, one of the recommendations was that the purposes of the act, as set out in section 1, did not include public accountability as one of its purposes, and it was thought it ought to be included.

Essentially, the committee instruction was, "The committee believes that integrity in government is enhanced through public accountability and that freedom of information legislation is one of the best ways to ensure that governments are open to the electorate they serve," the recommendation being that the section be amended to include a provision as follows: "to make public bodies more accountable to the public."

**Mr Elston:** I'm really not opposed to it. The whole essence of all the activity seems to be that very item. It almost is redundant, in a way, to do it, but if it makes it seem more complete, I'm not opposed to it. The one thing we generally like to do as legislators is to try and keep our legislation as brief as we possibly can, but it would be pretty hard for somebody to argue that the public shouldn't have any right to hold you accountable and, as a result, that's why you want the act to apply. It just seems redundant, that's all.

**Ms Swift:** Moving on to the next section, section 1, and inconsistent wording that appears in that section: This is one of the technical amendments that was recommended by the commissioner, that section 1 refers to a right of access to records "held by or under the control of" institutions. The commissioner noted that throughout the act the phrase that is used generally is that there's right of access to records "in the custody or under the control of" institutions, and he recommended that for completeness or tidiness' sake it ought to have the same wording in the section, so the recommendation just reflects that.

**Mr Elston:** We did have a discussion about a significant problem with that. There was a case where a solicitor held material which related to a municipal matter, as I understand, and the request was for that information to be divulged. I understood that that material was decided by the commissioner to be available anyway.

**Ms Swift:** I don't remember that discussion, Mr Elston, but I can look back.

**Mr Elston:** We had two discussions: one about the solicitor trying to indicate that under solicitor-client he could withhold; and the second one was about councillors, with their own notes on the side of items.

**Ms Swift:** Yes, that's an exception.

**Mr Elston:** "Under the control of": How does that become more precise, or what problems are associated with that phrase as opposed to "held by"? "Held by" would mean if I had it in the file in my drawer type of thing, but with "under the control of," I guess it could be in any place in the province as long as it was recallable by the institution. Does that mean that if I have a physician who is the physician for the municipality, for instance—maybe you have a person who looks after the needs of employees—the files that physician has in relation to the employees of the corporation might be "under the control of"?

**Ms Swift:** Actually, that is an issue we get into more with the next heading. The section with inconsistent wording—it's just to make sure all the sections are using the same wording. The question of interpretation really is one we get to in the next section, but we can discuss it there.

**Mr Elston:** I was just asking the question because there's no point recommending we change all the wording to be the same if there's going to be a problem with the phrase, that's all. Let's make it the same then, and let's wait to have a discussion on the next one.

**Ms Swift:** And deal with the interpretation.

**Mr Wiseman:** In terms of the annotations on the



sides of documents, I just wonder where you draw the line between the philosophical musings and the evolution of an idea that leads to the creation of a decision as opposed to sitting down over dinner and saying you had dinner with this person so you're going to vote in this way because you thought they were really a nice guy or woman or whatever.

I wonder if the philosophical musings of somebody should be accessed or whether those thought processes are personal and should remain separate, whether there shouldn't be some distinction made between those two ways of coming to a vote.

If you decided you're going to vote this way because the guy slipped you 500 bucks and you put that in the column beside the vote—

**Mr Elston:** Well, that should be divulged.

**Mr Wiseman:** That should be divulged. But if it's an attempt to do the pros and cons of an argument and sort them out, I'm not sure I would want to have all those thought processes revealed, because some of those would be of a rather personal nature.

**Ms Swift:** That's the nature of the discussion in the next heading. Remember that the town of Mariposa came forward and was concerned that it had been asked under the act to produce the personal notes of its councillors. They had made notes for memory aids for discussion purposes for subsequent council meetings.

**The Chair:** To interrupt for a minute, also they came forward about the point of the meeting in the restaurant where notes were put on napkins, a meeting that wasn't called but just, "Let's get together for a coffee and discuss this," and whether those notes, because it wasn't a called meeting—I don't know whether it's covered in here.

**Ms Swift:** That specific instance isn't covered but the upshot of the discussion here is that the various orders that have come down from the IPC really focus on the issue of whether these notes are integrated into the institution's files. If they're personal notes, they're kept separate. They're not going to be subject to the act because they're not "in the custody or under the control of" the institution.

There were two cases the committee heard about. The first one dealt with a case in which an employee had made notes during an interview process, and one of the candidates who did not succeed in getting the job wanted those notes. The employee objected to producing those because she said she had produced those for her own personal use, had kept them on a computer at home and had not integrated them into the institution.

It was found subsequently by the IPC that those notes were used to prepare a memorandum that went to her superior, and the IPC or the commissioner felt that the records, those personal notes as she called them, ought to be produced because they were integrated into the files of the institution.

Perhaps the case that's even clearer than that is another one dealing with political party records that were held by an employee in the Office of the Premier. Those notes were part of, at that time, the Liberal Party, and he kept

them in his office but they were integrated into the files of the Office of the Premier. Despite the fact that they were notes that were unrelated to the functions of the Premier's office, they were held to be producible because they were integrated.

The key here is the degree of integration, or the integration into the files. The act doesn't look at the issue of what kind of notes they are, whether they are personal notes or unrelated to the functions. It really looks at the degree of integration.

1630

The committee, you'll remember, also felt there might be a double standard created by virtue of the fact that the personal notes of members of the provincial Legislature would not be covered, would not be producible under any act because there is no freedom of information act that applies to the members of the Legislative Assembly, except for parliamentary assistants or ministers, whose notes relating to the ministries in which they are involved might be producible. It was felt that there was some double standard because local government institutions and the councillors might have their personal notes producible because they are covered by the Municipal Freedom of Information and Protection of Privacy Act.

What I understood from the committee was that the committee wanted to deal with that inequity, as it saw it. There are two options for the committee's consideration on this.

The first option is that the act be amended to specifically exempt from disclosure the personal notes and files of elected officials, that is, sort of a blanket, across-the-board exemption. If they're personal notes, the act has to look at that and consider that issue, rather than the degree of integration.

The second option is that the act be amended to specifically exempt from disclosure the personal notes and files where those notes are used for their personal use and are not integrated into the institution's files. In effect, that second option incorporates the test that is being used currently. It just makes it perhaps a little bit clearer.

**The Vice-Chair (Mr Paul Wessenger):** Could I just ask for a point of clarification? "Integration" means not whether they're in any way related to the institution's files but whether they actually are present, is that correct?

**Ms Swift:** That was certainly the case with the political party records. It was a greyer area when they were dealing with the interview situation, because the commissioner said two things: (1) they were integrated, and (2) they dealt with responsibilities and functions that the employee was carrying out for the organization. It's not as clear, perhaps, as we'd like it.

**The Vice-Chair:** What is the rationale for having the location of the personal files be relevant? Shouldn't it be whether they're related to the activities in the institution?

**Ms Swift:** Because the act says "in the custody or under the control of," that's the test. What you have to look at, then, is whether or not the institution has custody or control, not so much what type of records they are. That's just the design of the act. The whole design of the act is to look at, are these records the institution holds, if

you will, as Mr Elston says: whether or not they have them in their custody or control.

**The Vice-Chair:** Let's just take political records that appear to be unrelated. You could have personal things, like a Christmas card list or something, sitting in your—to my thought, I don't see the actual physical location being relevant, because you're trying to give a person information about how the institution operates, and if it's something that's unrelated to the operation of an institution—I don't know. It should be some sort of functional connection, I think. Political party files, maybe you could argue, is a functional connection; maybe you can't. But I think there should be a functional test there. That's my own view on that.

**Mr Hope:** Okay, option B. I hate this, when you get lawyers in committees to deal with something like this.

**Mr Sutherland:** Lawyers are very helpful.

**The Vice-Chair:** Okay, we have one member who prefers option B.

**Mr Wiseman:** I prefer option B.

**Mr Elston:** B is fine. What it means is that it'll alert anybody who doesn't want to release their files. What's going to happen here, necessarily I think, is that under an abundance of caution there will be separate pads of blank paper that will mean no notes will be made anyplace. That's physically what will occur, practically what will occur. From my standpoint, I don't think it really matters. The issue is out there. People know that they may be asked to make notes available, so they'll take their notes and they'll crumple them up or whatever.

**Mr Wiseman:** Or they'll just come back and say, "I did not take notes."

**Mr Elston:** I think a lot of people probably will destroy them. The problem that causes for us is the fact that the history that's written at the time will be totally unavailable for later review. I mean, a lot of personal diarized material has been used for good historical research later on. You get to find out what people went through. What this type of amendment will do and what our act is doing is defeating anybody's inclination to keep a running record. I regret that, but this may be the only way we can alert people to the fact that if they want to make a note about, I don't know, the purchase of bread and butter from corner stores when they're reviewing a bylaw about zoning for corner stores, that it may be available, then that's going to be what we'll have to give up as far as society goes.

**The Vice-Chair:** I think the basic effect is that you're going to get people stripping their files before they're traced.

**Mr Elston:** That's right, and it won't be available for later review. I think that's a sadness that is associated with this, but how do you get to know about it? If we should make the change, 20 years later—or is it 15 now?

**Ms Swift:** We're recommending 15.

**Mr Elston:** Fifteen years after the fact there won't be very much stuff to be made available that we don't already know about, and I think that in some ways is sad.

**Mr Hope:** The problem is that if you have nothing to

hide, you'd have no problem putting notes. If you have something to hide then—

**The Vice-Chair:** No, it's not that.

**Mr Hope:** I mean it's time people—

**Mr Wiseman:** If in our view you're misconstruing from the media on points, I would say we know they would never misconstrue, but certainly it could be a problem in the—

**Mr Sutherland:** How you interpret things 15 years later may be different from how you meant them at the time.

**Mr Drummond White (Durham Centre):** Can we move on to the next point?

**The Vice-Chair:** I guess we can, since there seems to be—

**Ms Swift:** Consensus?

**The Vice-Chair:** Consensus with regret, shall we say?

**Mr Wiseman:** I think option B does leave enough latitude to allow people to keep notes of a personal nature, as long as they're not integrated.

**The Vice-Chair:** They could keep the files in their desks instead of putting them in the filing cabinet, and then they're not integrated. That's the simple way: You just keep your separate files for your—

**Mr Elston:** No, no, that's not quite right. The decision is that the integration can occur by a second document, and the integration is with respect to the use of the notes as opposed to where they're kept or how they're kept. It's the ultimate use in the case of the woman who made her report.

**The Vice-Chair:** But that's almost a functional test, though, because they're functionally related.

**Mr White:** Why are two lawyers debating upon a judgement that's already been arrived at?

**Mr Wiseman:** Because they're basically frustrated judges.

**Ms Swift:** Moving on to the next section then, this is the start of dealing with the whole issue of exemptions. The first exemption under the act is the draft bylaws under section 6. Section 6 says:

"A head may refuse to disclose a record,

"(a) that contains a draft of a bylaw or a draft of a private bill; or

"(b) that reveals the substance of deliberations of a meeting of a council, board or commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public."

The concern of one witness was that the meaning of "substance of deliberations" is unclear and that the various orders of the IPC have not clarified the meaning. There are two possible interpretations that have been suggested. The first is that "substance of deliberations" might mean the content of the actual discussions. The second is that it refers to records that form the basis of discussions. It was suggested to the committee that the second interpretation should be adopted because it would be more in keeping with the statute which authorizes a closed meeting in the first place.



There are several orders of the IPC that have dealt with the issue, which I've listed on page 16. In all of them, it's suggested that the interpretation is the first one; that is, that it's the substance of the actual discussions themselves rather than the records which form the basis of discussions. On a review of those orders, it doesn't seem clear, to me at least, that there is an ambiguity and that the Information and Privacy Commissioner has interpreted "substance of deliberations" to mean the substance of the actual discussions themselves.

1640

In any event, the committee wanted to discuss that issue. They wanted more information. Again there are two options for the committee's consideration. The first is, "The committee believes that the term...is vague and ought to be clarified," and it should be defined as including the documents and records that form the basis of discussions. The second option is, "The committee is satisfied that the meaning of the term...is adequately clarified by...the commissioner and believes it is unnecessary to make any recommendation on this issue."

**Mr Hope:** I would suggest option A.

**The Vice-Chair:** Any others?

**Mr Elston:** This section does not override the issue of personnel matters because of the way it's written here. I understand personnel issues can go into closed meetings. In fact, after the announcement today on the Sewell material and the related changes about all meetings being open other than personnel and some other things, this section should of course say, "except as provided by section 14," subsection whatever, that deals with personnel matters, because this is pretty blanket otherwise.

**Ms Swift:** Yes. Do we amend this?

**Mr Hope:** I thought we were going to open up personnel issues.

**Mr Elston:** No, you're not. Personnel matters are not going to be opened up under council amendments.

**The Vice-Chair:** Personnel matters cannot, or property or acquisition matters. There are all sorts. We have to ensure that the existing confidential matters remain confidential.

**Ms Swift:** Does the committee want to change that recommendation slightly then?

**Mr Elston:** It seems to me that you don't want to have the conflict between the two sections. You want to make sure that it's clear, that if it's a personnel matter or otherwise, it's going to be protected.

**Ms Swift:** It's exempt.

**Mr Hope:** My understanding is, it starts off and says "Draft bylaws" etc.

**Ms Swift:** Yes. That's section 6, the first exemption from disclosure.

**Mr Hope:** I'm trying to address what Mr Elston was bringing forward dealing with the issue of personnel.

**Mr Elston:** You can have bylaws that do deal with personnel matters.

**Mr Hope:** Oh, do they?

**Mr Elston:** Can; don't have to. In fact you can pass

bylaws about cost of acquisition of properties and other things as well. The substance of a bylaw could be any number of items.

**The Vice-Chair:** I think the suggestion is that we take a look at the existing exemptions to make sure that this option A doesn't override any of them or all of them. I think that's agreed, is it?

**Mr Elston:** Well, we could leave the commissioner with some more work to do.

**Ms Swift:** That would be a lot of work. All right, moving on to the next one; that is, the time limit for exemption. Under clause 6(2)(c), the exemption for draft bylaws and meetings held in the absence of the public applies only for 20 years from the date that the record was created.

In its 1991 review, the committee felt that this period of time was needlessly long, that with the passage of time the sensitivity of information of course decreases, and recommended that the exemption period be changed from 20 years to 15 years.

**Mr Elston:** Can I understand why a draft bylaw shouldn't be made available sooner than that? When we first went through this, 20 years was the standard time for all this stuff basically, so it was put in. What is the nature of a draft bylaw that requires it to be—because the final version of the bylaw comes out. What is it with the draft bylaw?

**Ms Swift:** To be honest, I don't know. I don't know what it is. I can find out for you.

**Mr Elston:** When we went through this, I think at one point I was going to ask the question and I got off on to something else. If you've got the final version of the bylaw, which to be effective has to be public, what is it in the draft that might cause concerns that you couldn't release for 20 years, now about to be 15? And why would you be interested if you've got the final version?

**Ms Swift:** There's a recommendation and a discussion later on in the report about other draft documents of a report or something, and they recommended—

**Mr Elston:** I can understand a draft document or a draft report, but a draft bylaw? When you're really looking at the evolution, I guess, presumably each reading of—

**Ms Swift:** I don't know the rationale.

**Mr Elston:** Would that allow people to do all the discussion around a bylaw in draft form, take that off the public record for 15 years and then just bring forward the final version? I guess it would, by just treating everything as draft, and then you'd introduce the final version of your bylaw in the final form for first reading. I was just trying to figure it out in my own mind. I'm still not certain.

**The Vice-Chair:** Yes, I don't know why the concern with the draft bylaw, unless it dealt with a sensitive measure to begin with.

**Ms Swift:** Shall I go back and try to dig up what the rationale might be?

**The Vice-Chair:** Yes, why.

**Mr Elston:** Unless some of the other committee

members understand this better than I do. Going from 20 years to 15 years sounds great, but why are we doing it at all?

**The Vice-Chair:** For sensitive personnel matters, probably.

**Ms Swift:** For substance of deliberations of secret meetings.

**Mr Elston:** That type of a problem I can understand, but a draft bylaw—

**The Vice-Chair:** I don't understand why even a draft bylaw should be confidential, period.

**Mr Elston:** No. A report that is being made internally sometimes does change as you get material, as this report will change.

**Ms Swift:** Yes.

**Mr Elston:** We'll get more specific, or we'll change and the options are—or the understanding wasn't clearly put forward. I can understand why a document, something like this, as a report might be changed, but a draft bylaw—it seems to me if you're looking at a bylaw it can be changed or amended in full council, in any event.

**The Vice-Chair:** It's just like, I suppose, thinking of the Legislature, draft legislation.

**Mr Elston:** I don't know whether or not Mr White has any vision or views on that. Do you know why we did that at all?

**Mr Frank White:** I think it goes back to the—

**The Vice-Chair:** Mr White, would you come to the desk, please.

**Mr Frank White:** From what I remember, it was the view that councils should be able to deliberate some things in private, have their deliberations, and once they go through a number of drafts and they produce either the final draft or the proposed legislation or bylaw, then that would become a matter of public record.

It goes back to this: What do you do in private in terms of a council? What can they discuss in private? The Municipal Act at that time—I'm not sure if it would have allowed them to do this. It really came back to what it is they're allowed to discuss in private and what records that relate to that discussion would remain confidential.

**Mr White:** I'm wondering about the issue of the time limit because I understand from our earlier discussion that in other jurisdictions the time limit was a 10-year exemption, and we're moving from 20 to 15. Why could it not be reduced further to a 10-year time period?

**Mr Frank White:** That's something the committee could consider. I think in BC they've reduced it to 10 years in some of the exemptions; some of what would be discretionary exemptions, like this one.

**Mr Elston:** If BC can do it in 10, we can do it in seven.

*Interjections.*

**Mr Sutherland:** I'll name it in three.

**Mr Wiseman:** Maybe we could do it and just open it up. I don't know why a draft bylaw should be—

**Mr White:** The issue of what's covered is another story, but I was thinking in terms of the time limit. I'm

wondering why we have 15 as opposed to 10, which other jurisdictions have used, and could we not adjust that 15 to 10. If we're going to make a change, why don't we make a more significant one?

**Mr Elston:** It's probably compatible with the other study that was done.

**Mr Wiseman:** Yes, that's what it does do, make it compatible with the—

**Ms Swift:** The report, yes.

**The Vice-Chair:** The only thing, some caution if you're dealing with a personnel matter that deals with a very sensitive issue.

**Mr Frank White:** The time limit usually extends only to the discretionary exemptions, which would not include personal information or third-party trade secrets—advice, recommendations, economic harm; those exemptions.

**Mr White:** Ten years would not cause any prejudicial information to be revealed early.

**Mr Frank White:** I can't speak on behalf of municipalities. I know, for instance, the Ontario government and its records management. Almost 70% of records, I believe, are destroyed within seven years after their creation. A lot of it is going because there's no value. If there is a value, then they'd be transferred to the archives. So 15 and 20 is a particularly significant—

**Mr Wiseman:** Who defines the values? If the value is being defined before the freedom of information will allow it to become public, then it could be that some things you determine as being valuable are not the same as what I would determine as valuable.

1650

**Mr Frank White:** For a municipality, I believe they have to pass a bylaw, a records retention bylaw, that would determine how long records would be maintained, and that would be a matter of public record. When they produce that, they'd review the historical needs, the administrative needs, the research needs of keeping those documents. So it has to go through a formal process before you destroy records.

**Mr Elston:** If we put in 15 years, just to be compatible with the previous report, is this the earliest that it could be done, or could a council decide they would let it out earlier?

**Mr Frank White:** These are discretionary exemptions, so that means if there was a freedom of information request, even though the information was exempt, the person making the decision could still release the record.

**Mr Elston:** But suppose I was on the contrary side of the proponent's position and, under some kind of a discretionary decision, the municipality let out this information before the 15-year period. Can I attack them as not upholding the—

**Mr Frank White:** What this is saying is that you can't claim this exemption when the records are 21 years old. If you have these, you're going to have to give them out.

**Mr Elston:** No, I'm talking about someone who may decide, for instance—under our new amendment, 15 years—at year 14 that they would like to let them out.



Does this preclude them from doing that?

**Mr Frank White:** No.

**Mr Elston:** If the discretion has been applied to prevent them from going out at 10, but now at year 14 they say, "Yes, I think we'll let them out now," could they be held accountable for that?

**Mr Frank White:** No, they could still decide, in response to a freedom of information request, to allow this stuff out after five years as part of the discretion, if they wanted to. In the municipal sphere, the council or committee or person selected by council is the head. So it's kept at that level in terms of the final decision-maker at the political level for municipal council.

**The Vice-Chair:** Okay. Any other further comments?

**Mr Hope:** I was of the opinion, most bylaws, when you're dealing with land or anything else, it usually takes at least 10 years to develop a piece of land, and putting that information out—

*Interjection.*

**Mr Hope:** Yes. So there's a little bit of a protection clause maybe for decision-making before actually something could happen.

I have no problem. Probably why they had 15 years back in 1991 was believing that maybe most people in political life have a longer term than three years or a five-year term.

**Mr Elston:** Some certainly do.

**Mr Hope:** Yes. To change it, if there's no bound reason to—we're dealing with municipal freedom of information. I would say the most appropriate would be after a four-year maximum term, which would be 12 years. That's the only sensitive area. I find that it takes such a long time to reveal information, such as dealing with a development issue in the municipality.

**The Vice-Chair:** Any other comments? Do we basically agree to this 15 to be consistent, then? Mr White, maybe you should stay, just in case there are other questions when they come. They'd have to move back and forth.

**Mr Elston:** This is just a report, and since there hasn't been a lot of change made to the other legislation, perhaps there'll be some decision by the drafting authority that it will take a look at the time period. I think we should be consistent at this stage and leave it at that.

**The Vice-Chair:** Yes, I think so too.

**Ms Swift:** Okay?

**The Vice-Chair:** Okay.

**Ms Swift:** Moving on, next is the exemption dealing with the advice or recommendations of employees or officers of the institution to the institution itself. The exemption basically sets out that there are certain types of information that are exceptions to that exemption. The list is quite extensive under subsection 7(2).

It includes factual material, but the suggestion has been that, although the list includes factual material and specifies other types which cannot be withheld, no reference is made in there to public opinions or economic forecasts. It was thought that such material ought to be

included under the exception and that certainly this would be in keeping with the Williams commission report, which suggested that factual material or analysis of factual material that goes beyond mere reportage, such as documents relating to public opinion polls and economic forecasts, should not be included in the exemption.

**Mr Hope:** No problem.

**Ms Swift:** I hear that there's no problem. Shall I forgo the discussion then? The recommendation on the bottom of page 19 says essentially that subsection 7(2) "should be amended to include a specific reference to public opinion polls and economic forecasts" and, secondly, that the 20-year exemption, which is applicable to this exemption, should also be reduced to 15 years.

**The Vice-Chair:** Agreed.

**Ms Swift:** The next section deals with the law enforcement exemption.

**Mr Elston:** Does the public opinion poll encompass surveys? What are we describing as public opinion polls, the issue of a survey as opposed to a poll? Polling, it seems to me, is a much more formal part of that. There could be informal surveys, or there could be a formal survey as opposed to a poll taken, for instance. What would we do with that? That will invariably be the next issue.

**Ms Swift:** The section currently exempts from the exemption statistical surveys. That suggests that other kinds of surveys might not be included. To be honest, I don't know the answer to how "public opinion poll" has been interpreted.

**Mr Elston:** Maybe we should ask the question whether or not we should have a definition of "public opinion poll" for the purposes of this.

**Ms Swift:** Okay.

**Mr Hope:** If a survey is asking for an opinion, then it becomes an opinion poll, right?

**The Vice-Chair:** An opinion poll is one that's done scientifically, I would think.

**Mr Wiseman:** What about focus groups?

**Ms Swift:** I think the other jurisdictions that have included this in their exemption haven't defined it. Both British Columbia and Nova Scotia specifically exclude them, but I don't think they define them. I can look into that and report back to the committee.

The next one deals with law enforcement, and the concern raised was by law enforcement agencies that having to respond to a request within 30 days, as required under section 19 of the act, may interfere with an ongoing investigation. That is, the very processing of the request may interfere with it; that by having to go into the field and take documents out that are being actively used by investigators and to have those investigators review the documents to determine whether or not they fall within any of the exemptions may be intrusive and disruptive to an investigation. The committee heard that in the past what has been done is that there have been informal agreements or persuasion to have people who are requesting to put off the request until such time as the investigation has been completed.

The committee should know that section 20 of the act currently permits the extension of that 30-day period for a further period that is reasonable in the circumstances if the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution.

There has been one order that deals vaguely with this, I guess, and that order found that section 20 would encompass the situation where a request has been made for a large volume of records which must be reviewed carefully by persons who are otherwise engaged in other duties of the operations. But the police organizations that came forward felt that this wasn't sufficiently clear, in circumstances where there might be a disruption, to allow them not to have to process the record. The other evidence that the committee heard was that this type of interference, or the possibility of it, was very limited and didn't happen very often.

So there are two recommendations or two options for the committee to consider.

**Mr Elston:** But as I understand it, it was also part of the evidence that there was in some cases a sense that people who wanted to frustrate the investigation, if it was going to be getting close to them, were also in a position to have people using it. Wasn't it those sort of exceptional circumstances? In fact, investigations—let's put it in this context—are exceptional circumstances many times, when it comes right down to it. It doesn't happen that often, because that's the nature of their business. But when there's a public interest—for instance, I can think of the case in Ron's area, the Kristen French and Mahaffy circumstances, where there was a huge amount of inquiry into the status of those investigations. Although nobody talked to us about that, that would be a circumstance where I could imagine people would have to take time after time to respond.

1700

I was going to ask, in relation to the first option, whether the police could apply before, for instance, a request was made or whether they would have to wait for the request and then take time to make an application to the commissioner, or whether they would respond within a day or so and say, "We're too busy; give us an extension," and have the appeal occur.

It seems to me that if we do the first one, we would have to prescribe some manner in which the application could be made to the commissioner under the circumstances. I'm actually taken with the first one, because time is of the essence in extreme circumstances where an investigation has to be carried on and any kind of request could lead to a frustration. It seems to me that we have to be more precise if we are going to allow a commissioner to exempt a law enforcement agency by setting out some circumstances or some suggestions as to how that might be dealt with.

**The Chair:** Mr Elston, I was in the OPP and I know how investigations work. Officers have certain areas that they investigate. There were 35 police officers involved in that investigation. They all bring the pieces. There's actually one person who knows where all the pieces fit.

The reports that come in—to get one report tells you nothing but yet could really damage the investigation. It's not a simple one, especially one of that size.

Mr Wiseman has a question.

**Mr Wiseman:** It seems to me that on this one I would ask, who would want to know this information in the process of an ongoing investigation? It seems to me that the general public and the media would want to know. If that's the case, it may well be that disclosure of one piece of information at some point could be a clue to the person they're looking for, but they don't know who they're looking for at this point, and it could really hamper the case. Maybe we should get a comment or two from staff and find out what they think about these particular options and whether they've seen any kind of examples of what we're imagining in our minds here.

**Mr Frank White:** I think both Priscilla and I could answer this one. First of all, the police forces are talking about delaying the investigation as opposed to disclosing any information that would interfere with the investigation. I don't think really that's what they were complaining about; it's just something interfering with the timing that's taking place. If the committee does consider something under "frivolous and vexatious," maybe it could be fitted under that. It's really difficult to impute the motive. Typically, it would probably be somebody who's involved in the case who would be making the request.

**Mr Elston:** Or even the media.

**Mr Frank White:** It could be; it's possible.

**Mr Elston:** If the media wishes to be involved in it, this is an avenue to get into the—

**Mr Frank White:** But it's even more unlikely that they're going to get anything, because this is all personal information. It's not going to be likely disclosed to anyone other than perhaps some small portion to a person who's involved. It's the timing, I think, that's the problem, not what's being disclosed. I don't think the police were complaining about that at all.

**Mr Elston:** I guess the evidence, for instance, could be, "Have you found—"

**Mr Wiseman:** A knife.

**Mr Elston:** Yes, a weapon. "Have you got any kind of a lead?" That may or may not alert people to how serious the investigation is with respect to getting closer to a suspect.

**Ms Priscilla Platt:** But they would have the right under this exemption to refuse to confirm or deny anything having to do with it, even the existence of the investigation.

**Mr Elston:** But they'd still have to answer the questions.

**Ms Platt:** Yes, and I think the issue is that the police feel, or at least this submission relates to the feeling, that the time it takes to actually answer the request and go through the records takes away from their time to do the investigation. We hear similar comments from litigators, for example, who say that in the midst of litigation the other side or someone will make an access request. Even



though it would be subject to solicitor-client privilege, under the act they still have to go through all of the records and respond and so on. It's not dissimilar to that sort of issue, which is just the time it takes.

**Mr Hope:** Mr Wiseman started to touch on who would actually want this information. Reporters seem to be the key ones. I just went through that in my own riding. They want everything and they want it now, and it hinders the proper investigation.

Without the expertise of understanding fully the investigation route and knowing the steps involved in an investigation, and not wanting to become or pretend to be a police officer, I'm of the opinion of option B on this one. I'm just cautious about it. I wouldn't want to put any barriers up by making recommendations. As Mr Elston was putting forward, putting steps and procedures in would be better left to those who understand steps and procedures and actual investigations. I'm very concerned about putting barriers in place that might in good faith be to help but would hinder.

**The Chair:** There's nobody from Niagara sitting on the committee, but Mr Bradley would know quite well that people would phone his office also and my office and say, "I demand to know what's going on, who the suspects are, who this is and everything else." We'd say, "It's under investigation." We had no more knowledge than the police departments.

The thing is that it wasn't the press that was demanding; it was the person on the street. People were very concerned whether the person who could possibly be involved lived in their neighbourhood. It became a real issue in Niagara. I've never seen an issue like that before, and I think Randy too, with the incident in his neighbourhood also, in Chatham. People who live in the community are demanding this, and it would hamper police investigation.

**Mr Hope:** But the public demanding and making sure that proper procedures—I have all the faith in the world. You're absolutely right; I was getting calls from people demanding stuff. I firmly believe that our police officers in our community are well equipped. Anger and frustration in an emotional time brings out the worst of us sometimes. Wanting to know information, when the information might not all be there, we could take inappropriate action in our own communities and cause more harm than good.

That's why I'm really cautious. That's why I'm sitting here leaning to option B. I would say, in all good intent, I would like for the public to know, but when to know, how to know, what would interfere with the police, putting more barriers up in place of accessing information, I guess I'm just not equipped to do that. That's why I'm leaning to option B.

**The Chair:** Any other comments?

**Mr Wessinger:** I don't really know what to do about this one. We obviously don't want harassment occurring, but on the other hand—

**Mr Hope:** Let me explain something. With regard to the issue that happened in my riding, people knew what had happened within an hour; they knew who the perpe-

trator was. The repercussions of a community in anger and frustration sometimes lead us into doing things that we no longer do in a so-called normal society. That's why I just have a tendency of leaning to option B until I have a little bit more expertise around this whole issue.

Maybe you could incorporate it into the next phase and deal with this issue, but right now, hearing the only presentations we did, it's really vague. I probably have more knowledge on putting the hospitals and schools boards and others into this than to deal with this section, but if you want to incorporate it into phase 2, I would say let's do so.

1710

**Mr Elston:** I think it's obvious that option A is not going to be used, and B, for me, doesn't adequately deal with it. Perhaps what we could do is rework option B to a little more fully explain our concern about the potential for delay: "...but under the circumstances are not prepared to raise barriers, and as a result, we wish more time to pass before changes are recommended to the sections, on the understanding that the current act will allow appropriate exemptions to be requested."

The reason I wasn't taken by option B was that it's quite curt. It's kind of pieced together, bits and pieces together. Maybe if it was redrafted, because I really am concerned about it. I think Randy's right: You don't want to be sort of cavalier and go around raising more exemptions, because that's not really the world we want to have. But I would like to leave, anyway, a flag of concern that if this is seen to be violated more frequently in the future, it will be something that we could look at. Maybe we should leave it at that. But I would be happier to go with that option only if we raised a flag that said we were concerned by this and that if the experience became a more frequent disruption of investigations, we would reconsider.

**Mr Hope:** Yes, using it maybe for better analysis and even using it in the phase 2 portion of this process.

**Mr Elston:** Yes, we're going to be busy in phase 2. If we deal with those other organizations, that will be a full plate indeed, believe me.

**Mr Hope:** Just as an option, that's all.

**Ms Swift:** The next section deals with the same section; that is, section 8, law enforcement, subsection (2). Essentially, it says that clause 8(2)(a) provides that the head may refuse to disclose records prepared in the course of law enforcement inspections or investigations. Subsection 8(4) provides an exception to that exemption. It says, "Despite clause 2(a), a head shall disclose"—that is, must disclose—"a record that is a report prepared in the course of routine inspections." "Routine inspections" refers to such things as health and safety legislation, consumer protection regulations, environmental protection schemes.

The concern was that the wording of this section leaves open the possibility that routine inspection reports could be refused—that is, they could be held back from disclosure on some other exemption—and that ought not to take place. So the suggestion to the committee, and the committee adopted this, as I understand it, was that the



wording be amended to read, "Despite any exemption, a head shall disclose a record that is a report prepared in the course of routine inspection."

**Mr Elston:** This was the Ottawa restaurant inspection list, wasn't it? Isn't that the issue we talked about there, when they were withheld for a while and then ultimately made available regularly and then not reported?

**Ms Swift:** Yes, that's right. You have a very good memory.

**Mr Elston:** I'm interested. It's an interesting problem because something such as an inspection which isolates a few problems in a kitchen ultimately being written up in the only daily or the only weekly newspaper, which is then out there for several weeks, could really be quite interesting.

**Mr Sutherland:** I would say most of them could be written up at some point in time. I imagine most restaurants or most food places at some point in time, depending upon when the inspector comes in, could be written up for some small violation.

**The Chair:** You mean, "Get the cats out of the kitchen"?

**Mr Sutherland:** Well, no. That's a little more significant.

**Ms Swift:** I take it this recommendation is one the committee supports?

**Mr Hope:** We support that recommendation, yes.

**Mr Elston:** I guess so, yes. I guess that's all right.

**Ms Swift:** The next section deals with relations with governments. Section 9 provides that, "A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from" the government of Canada, another provincial or territorial government, or the government of a foreign country.

There's a suggestion that this section should be amended to include municipal governments as well. The contrary view is that this would leave open many municipal-level institutions to claim the same exemption and that that would result in greatly expanding the number of documents that could be withheld from the public.

There are two possibilities that I've prepared for the committee, essentially. One is that the committee heard very little evidence as to why the exemption should be extended to municipalities or about the harm that has been caused by this omission, so the committee is unable to make an assessment and makes no recommendation. Secondly, the committee wishes to hear more evidence before making the recommendation.

**Mr Hope:** I would go with option A.

**Mr Wiseman:** Do we want to recommend any potential courses of action that municipalities might take in terms of alleviating their expenses on the applications of freedom of information? One of the reasons the municipalities and the school boards were so adamant about shutting down freedom of information is the cost. Would we want to include here that in order to save money, it might be advisable for municipalities and school boards to determine right up front the information

which is of a personal nature and should be exempt from freedom of information, and then to make readily available on electronic medium or on whatever medium comes in the future public access to decisions being made?

The problem is, we heard from school boards and some municipalities around this whole issue of "frivolous and vexatious," and they asked us to shut down the freedom of information so that people couldn't get information. I think I remember one saying that they wanted to know the expenses—was it the number of rolls of toilet paper that the police use?

**Ms Swift:** Yes.

**Mr Wiseman:** Maybe some kind of direction saying that budgetary items such as that should be made readily accessible electronically. I mean, everything's done now on some form of electronic, accessible—

**The Chair:** The BBS, the bulletin board system.

**Mr Wiseman:** Then the more private and personal stuff can be deleted.

**Ms Swift:** Actually, I think those are two different issues that we're dealing with here. The issue you are referring to is dealt with later on in the report under routine disclosure, encouraging municipalities and other institutions to deal with disclosure. This one deals really with the exemption to access; that is, you cannot have access if it's an intergovernmental record. I think they're different issues.

**Mr Wiseman:** Okay.

**Mr Elston:** Yes. What I was trying to think here personally about was what the case would be between governments. If you were dealing with something like a joint board, it would be pretty easy to think that there are letters that go back and forth or negotiations or discussions around putting a contract of shared costs together, for instance, that might be sensitive-type information. I don't recall that being raised with us as an issue or as the issue that we should deliberate upon.

I presume even if there was a contract negotiation, you could talk about this being a matter of a sensitive business nature, yet I could appreciate that somebody might want to get hold of a letter that the town might have sent to another town when they were trying to deal with settling a contract on shared services, for instance.

1720

Frank, do you know whether that has ever been a big problem or not, people trying to access letters between one municipality and another?

**Mr Frank White:** I haven't heard, actually, that this has been a problem. I think what municipalities feel a little put off by is that they're not considered a government for purposes of this act. The only groups that can use this—where it's supplied by another government in confidence—would be a provincial or federal government or a government of a foreign country. I think they felt they should be called a government also for the purposes of the municipal freedom of information and protection of privacy act, but in fact they're not considered a government in terms of statutory interpretation.

I haven't heard of this being a problem, because in the



situation you're mentioning there is another series of exemptions in section 11 to take care of negotiations carried on, the plans relating to management of personnel. A lot of that is embodied in the section 11 exemptions.

**Mr Elston:** What would this information be, then, that would need to be of a confidential nature if they could take another exemption area? What mischief might work if they are not covered, I guess is our question, isn't it?

**Mr Frank White:** Do you have any examples?

**Ms Platt:** Basically, the municipalities can transfer a request to another municipality that has the greater interest, whereas, where you're the one government, like the Ontario government, when we receive something from the feds we can't transfer it. So this exemption made sense, and similarly at the local level, to the extent that they get something from the federal government in confidence during the course of discussions on some basis, and similarly from the Ontario government, they have the exemption in section 9. But what they don't have is municipality to municipality or local board to local board. In those instances, one could argue that the same interest is being covered off by their ability to transfer the request to another institution, in which case the in-confidence part, the institution that created that record, then claims the exemptions under the act to the extent that they apply.

**Mr Hope:** Option A.

**Mr Elston:** Yes, I agree with option A under the circumstances, I think.

**Ms Swift:** The next section deals with the time limit for the exemption for relations with governments. Currently there is no time limit on this exemption.

**Mr Hope:** This is just being consistent with what we've done already, right, moving from 20 to 15, to improve consistency? I'll save you some speeches.

**Ms Swift:** Yes. Thank you.

**Mr Hope:** No problem with that one.

**Mr Elston:** I like her speeches.

**Mr Hope:** Wait till the more important issues come up.

**Ms Swift:** The next issue deals with third-party information exemption under section 10. That section provides under subsection (1) that the head shall refuse to disclose a record that reveals trade secrets etc, and subsection (2) says, however, where the third party to whom the information relates consents to the disclosure, the head may disclose it. In other words, even after the person to whom the information relates consents, the head has the discretion as to whether or not to disclose it.

The recommendation is that subsection 10(2) be amended to state that the head shall disclose the record if the person to whom the information relates consents to the disclosure.

**Mr Hope:** No problem.

**Ms Swift:** The next issue deals with section 12, the solicitor-client privilege exemption. The issue raised here was that—there are several, but the first one deals with municipal police forces.

Section 12 provides that, "A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation."

It has been held by the Information and Privacy Commissioner that the relationship between local police forces and the crown counsel is not one that falls within the common-law principle of solicitor-client privilege and, because the crown counsel is an employee of the provincial government, that crown counsel is not employed or retained by local police forces. So the second branch of that exemption similarly does not apply. The result is that municipal police forces, in preparing a crown brief for crown counsel, do not have the protection of this privilege.

It was noted that the Ontario Provincial Police, however, do have the benefit of that exemption because the wording in the provincial act is somewhat different and in fact uses the term specifically of "crown counsel."

The suggestion was that section 12 be amended to accord the same protection to municipal police forces as currently is available to the OPP. The only kicker in this, I guess, is that in its 1991 review the committee preferred the wording under the municipal act because it thought it was broader and would apply to other counsel who are employed by the ministry but are not crown counsel per se.

So the recommendation is that section 12 "be amended to extend the exemption to cover the confidential communications between municipal police forces and crown counsel; and that the committee's recommendation...in the 1991 report be amended to reflect this proposed change to section 12 of the municipal act," just so there's concurrence between this recommendation and the 1991 report.

**Mr Hope:** No problem.

**Ms Swift:** Another issue with respect to this exemption was records prepared by non-legal staff. It was suggested that the commissioner's interpretations of this provision have narrowed the scope of the provision so that records prepared by non-legal staff, even though prepared for or in contemplation of litigation, were not covered by the exemption.

In one of the commissioner's orders, the commissioner ruled that the exemption did apply to memoranda prepared by non-legal staff of an institution for counsel in contemplation of litigation. In that case, the institution's solicitor had requested that staff prepare notes about a matter that was going to proceed to grievance arbitration. So from what I was able to tell from a review of the orders, I'm not sure that suggestion is accurate—that is, that it does not cover materials prepared by non-legal staff.

There are two options, then, for the committee's consideration. The first is that, "In the committee's view...it does not appear that the exemption has been interpreted so narrowly as to exclude any material or communications prepared by non-legal staff," and moreover, on the basis of the limited evidence presented on this issue, the



committee makes no recommendation. Alternatively, "The committee believes that further information is required from the Information and Privacy Commissioner before a recommendation can be made."

**Mr Elston:** I think option A is fine.

**Mr Hope:** I believe that what we need is more information from the commissioner on the issue. You indicated there was some discrepancy.

**Ms Swift:** I don't know if there's a discrepancy. Certainly, the person who came before the committee to make the recommendation felt there was some ambiguity in the Information and Privacy Commissioner's orders. I looked at the orders, and as I said, the one order did certainly allow the exemption to material that was prepared by non-legal staff in contemplation of litigation. The section currently is broad enough, as I said, to include not only the solicitor-client relationship but it also specifically says, "Material that was prepared by or for counsel employed or retained by an institution," and the order seemed to suggest that certainly that contemplates non-legal staff.

**Mr Hope:** The only thing I was thinking about with option B is that by the time we complete this report we'd still be able to get some information back from the commissioner on this issue before we could make a recommendation. We could probably clear it up, and that way we'd be dealing with clearer information in our report.

**Mr Elston:** But I think for the purpose of the report we could go with option A. If we want to make an inquiry of the commissioner about our interpretation of that, ie, that the exemption may be interpreted more narrowly than we have anticipated through Susan's work, to clarify that, that's fine, but I think really what we're talking about is doing the first, and if you want to get the commissioner's review of that, I think that's fine.

**Mr Hope:** Option A is fine.

1730

**Ms Swift:** The next section deals with provisions relating to the exemption for danger to safety or health. That section provides that a head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual. As is clear from this section, there is no authority on the part of the head to refuse to confirm or deny whether there is such a record. It was felt that the analogous section—that is, under section 8, dealing with law enforcement exemption—allowed the head to confirm or deny the existence of those records. The concern was that having to acknowledge the existence of a record and cite the section 13 exemption could incite a response which itself might reasonably be expected to threaten or endanger the health or safety of a person.

The recommendation then was that section 13 be amended by adding a subsection to provide that authority—that is, the authority to confirm or deny the existence of a record to which that exemption applies.

**Mr Hope:** I concur with the recommendation.

**Ms Swift:** The next section deals with the prickly problem of section 14 and personal privacy. The first

paragraphs on page 29 and 30 deal simply with an introduction to the scheme of that section. The first recommendation that was made to the committee was with respect to the complexity of the drafting of that section. It has been criticized as being overly complex, awkwardly drafted and difficult to apply. In its 1991 review, the committee looked at the corresponding section in the provincial act and came to that same conclusion and recommended that it be redrafted so it not be so convoluted.

The Information and Privacy Commissioner, with respect to this issue, suggested that section 14 should be restructured in accordance with the model that is in use under the British Columbia Freedom of Information and Protection of Privacy Act. Essentially, section 14 would state simply that the head of the institution must refuse to disclose personal information to any person, except the person to whom the information relates, "if the disclosure would constitute an unjustified invasion of personal privacy."

The circumstances set out in clauses 14(1)(a) through (e) would be moved to subsection 14(4), which deals with situations or circumstances where the disclosure does not constitute an unjustified invasion of personal privacy.

**The Chair:** Mr Hope.

**Mr Hope:** I was just giving Murray a chance. I concur with the recommendation.

**Ms Swift:** The next issue was the categories of presumed invasion of personal privacy. The scheme of section 14 is that the head shall refuse to disclose personal information in certain circumstances—that is, clauses (a) through (f). Subsection (2) deals with the criteria for determination of whether disclosure constitutes an invasion of personal privacy. Subsection (3) sets out disclosures of certain types of information, which is presumed to constitute an unjustified invasion. Subsection (4) are exemptions to that provision.

The problem that was brought forward to the committee was that there are essentially too many categories of presumed invasion of personal privacy under subsection 14(3). A key event in the interpretation of this section was a recent judicial review order in which—I should backtrack, actually. Until this judicial review order was made, the Information and Privacy Commissioner had interpreted subsection 14(3) in conjunction with subsection 14(2). That is, the presumed invasion of personal privacy could be balanced off against the factors in 14(2), so the presumption could be rebutted by the factors in 14(2). A judicial review decision ruled that this was a misinterpretation of the act. In fact, if you had a presumption, it could only be rebutted by the types of exemptions under 14(4)—that is, only the two categories: The disclosure "discloses the classification, salary range and benefits, or employment responsibilities of an individual who is...an officer or employee of an institution; or discloses financial or other details of a contract for personal services between an individual and an institution."

The suggestion was that the inability now, because of this order, to balance the criteria in subsection (3) with those in subsection (2) has injected rigidity into the act



and undermined the balancing of the interests that is the foundation of the legislation. It also fixes the categories of "an unjustified invasion of personal privacy" under subsection (3). The commissioner suggests that section 14 be amended to reduce those categories and to permit individual cases to be determined on a balancing of the criteria in 14(2) to rebut the presumptions under 14(3).

I'm sure I've confused you all.

**Mr Hope:** I would say option B, but I can just imagine lawyers who are good at drawing up legislation trying to put this one together.

**Mr Elston:** I'm really concerned any time we change the initial issues around protection of privacy. The wording is right. This will get us off the hook; we're recommending balance. But in making the change it becomes quite another problem, it seems to me, and I guess we'll have to recommend to the people who try and draft this that they actually see the circumstances under which there was a mischief permitted by the rigidity of the act, as it were.

I lean always to trying to make sure that personal privacy is protected. I think we have subsection 14(4), which says the public interest override is to be used from time to time. I'm just very cautious about moving away from that, and I don't know how rigid it is. How many problems have we really had? I don't feel that I've had enough information on that. We have the one issue which is delineated when a problem occurs, but the public interest override is still in the act and can be accessed if you have to use it; and in a previous section which we just talked about, people said, "Well, it hasn't been so narrowly construed as to cause a problem, so let's not change it." Before that, even, there was another section, I think the investigations section that we dealt with, where we said, "Things haven't been so badly used there that we need to change it either." So my question is, why in this circumstance do we have to make the change?

**Mr Hope:** I know where we're trying to go with this. Yes, it does get us off the hook in saying, yes, let's make it all of it, and that's why I made the comment that whoever the lawyer is who has to draw this up, it's going to be a hairy situation. I know the Freedom of Information and Privacy Commissioner brought the issue forward to try to put some balance into it. To ignore that I think would be wrong, but I also believe—taking in your considerations, Murray—that we must make sure that whoever is drawing this thing up, just don't throw it at them and say, "Here, see you later," and walk away smiling. I believe it's got to be one that gives an understanding, and that's why I would say, because at the same time it adopts the same recommendation as option A but adds the other section, which I believe is appropriate.

1740

**The Acting Chair (Mr Kimble Sutherland):** Any further comments?

**Ms Swift:** There is one other situation that perhaps the committee should be aware of when considering this, and it's dealt with later in the report, at page 103; that is, exercising the rights of a deceased person. I'll see if I can not confuse you on this.

Essentially, what this provides is that under section 54, any right or power conferred on an individual by this act may be exercised, if the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate.

The problem with the interpretation of that section has been, or it is felt it has been, that it has been interpreted very restrictively that "personal representative" means the executor or administrator who has been appointed by the court, and also that the exercise of the power relates to the administration of the individual's estate.

The concern is that this limits the availability of information for a deceased person's family. If they want to get information about, say, the person's care in a nursing home, or medical information for genetic reasons or anything like that, they are prevented from doing that under clause 54(a) if they are not either the executor or administrator appointed by the court.

What has happened up until the judicial review decision—and you know that under 14(3), medical information is one of those categories of information presumed to constitute an unjustified invasion of personal privacy if there's a disclosure of it. So what has happened in the past is that although the family requests personal information, medical information, under 14(3), they would be prevented from having access to it. But there has been a balancing of the criteria in 14(2) to allow them to have access in certain circumstances. By allowing the reading of 14(3) in combination with (2), you allow for those kinds of situations.

If you don't do that, under 54(a), the only circumstances in which families will have access to a deceased person's personal information is if they are an executor or they are appointed by the court. These two sort of tie in together in some sense; that is, these are some of the repercussions you were speaking about, Mr Elston. I'm not sure if that's made it easier or more difficult.

**Mr Hope:** I know some of the problems in that.

**Ms Swift:** It allowed for some flexibility.

**Mr Hope:** You're actually right, though, when using the family member of a deceased in trying to access information. I just went through that with one of my own constituents. It's like: "Where do we go? How do you do it?" That's why I'm leaning to option B. But I believe what Murray had said very clearly is to make sure you just don't throw it at somebody and say: "We've got it off our shoulders, and away you go. Now try to figure it out."

**Mr Elston:** You'll have to rewrite option B if that's the way we go, because it reads at the moment in the second line, "section 14(2) and section 14(3) to be rebut." I presume, "to be used to rebut" or "to rebut." Is that it?

**Ms Swift:** Yes. There's something missing there.

**Mr Elston:** I don't want to stand in the way of people getting information like that, but what are the other circumstances that might cause us some difficulty? Those are the ones I'm concerned about.

I know the commissioner has recommended this, which gives me some consolation, because the commissioner



and the office have been very good and very thorough in this and probably would be about the only thing that would allow me to proceed further with it.

There are some other statutes in existence these days as well which might be of interest in how this bill is applied. I can think of the good old bills—what is it?—108, 109, 110.

**The Acting Chair:** The Substitute Decisions Act.

**Mr Elston:** Some of those may in fact confront this.

**The Acting Chair:** Power of attorney.

**Mr Elston:** Power of attorney and the whole works.

**Mr Hope:** Some of them do, but there are still some vague areas.

**Mr Elston:** Maybe we should be putting a little rider in that any change we recommend also takes into account the new statutes, then.

**Mr Hope:** Yes.

**The Acting Chair:** Is that agreed, then?

**Mr Hope:** I think we should do an analysis to mention that there are avenues under these.

**Mr Elston:** When you say “we,” do you mean Susan or do you actually mean us?

**Ms Swift:** What analysis exactly?

**Mr Hope:** If you want to write it, Murray, you can.

We should make reference to those. I’m surprised the commissioner never brought that forward. I don’t remember the conversations ever making reference to other acts that were out there, but then I’m trying to remember—it was passed, wasn’t it?

**Ms Swift:** Oh, yes.

**Mr Hope:** I think that was passed by that time. I was trying to balance when those pieces of legislation—

**Mr Elston:** In fairness to them, they were underscoring some of the problems they had come up with in making decisions, and so far they won’t have been confronted by any of the new legislation. But I think it’s important for us to note those when the drafting is occurring. I’m happy enough to go along with option B.

**The Acting Chair:** Option B with the added comments?

**Mr Elston:** Yes, with the added comments about the new legislation and compliance.

**Mr Hope:** Boy, are we ever making progress in this committee.

**Ms Swift:** The next issue is that of mailing lists under section 14, personal privacy. It was noted that “There is no specific provision in the act dealing with access to personal information which could be used for mailing lists or other forms of solicitation.” The commissioner identified several privacy concerns in this respect and essentially recommended that the act make provision for that.

The committee should note that the same concern was addressed by this committee in its 1991 report, and the committee at that time supported the recommendation of the commissioner to include a provision to protect from disclosure personal information including an individual’s

name, address and telephone number when the request is made for the purposes of solicitation or a mailing list.

The committee was concerned at that time, as was this committee, that there are difficulties with looking at the purposes of the request. Currently, the act does not require a requester to state the purpose of the request, and it will not always be possible for an institution to know whether a request is being made for mailing list purposes or solicitation.

Second, there is no definition of “mailing list purposes.” It was not clear to the committee back in its 1991 report whether the request for a list of names and addresses for non-commercial purposes such as the organization of a union would constitute a mailing list purpose.

Since its 1991 report, of course, the committee has heard evidence that British Columbia has enacted provisions that create a presumption of unjustified invasion of personal privacy based on the purposes for which information is used. In other words, they do use or incorporate a purpose into the request test. The legislation does not contain a provision specifically authorizing the institution to inquire into the purpose, or any enforcement mechanism to deal with the misrepresentation of that purpose. However, the policy and procedures manual of the legislation provides that: “In order to determine whether or not this section applies,” that is, the section of the BC legislation, “the public body can ask if the applicant intends to use the requested information for mailing lists or solicitation purposes.” It makes no other reference to enforcement or testing the veracity of the claim. Nova Scotia’s legislation contains a similar provision.

So there are several options for the committee to consider. First is that the section be amended to provide that the disclosure “is presumed to constitute an unjustified invasion of personal privacy” if the personal information consists of the person’s name, address or telephone number and is to be used for the purposes of mailing lists or solicitation, and that “further consideration be given as to how the provision can be enforced effectively.”

The second option is that “The committee believes that limiting access based on a purpose test could lead to serious abuses of the act,” and essentially that the committee would not make that recommendation.

**The Acting Chair:** Comments?

**Mr Hope:** Mine would be option A, if you’re asking my comments.

**The Acting Chair:** I see Mr Elston nodding in agreement. Any other comments?

**Mr Hope:** Let’s start focusing on the next one.

1750

**The Acting Chair:** Okay. I see that A is going to carry the day on that one.

**Mr Hope:** Can we just move to the options before us on the next one instead of going through the complete dialogue?

**Ms Swift:** All right. The next section deals with salaries of public officials and employees. The options for



the committee consideration are set out on page 38. I've drafted four; there may be others.

**Option A:** The actual compensation, including salaries and benefits, paid to elected officials and public service employees should be published.

**Option B:** The actual compensation, including salaries and benefits, paid to elected officials but not to public service employees should be published.

**Option C:** The actual compensation, including salaries and benefits, paid to elected officials and employees receiving in excess of a particular amount—that is, there would be a threshold—should be published.

**Option D:** The actual compensation, including salaries and benefits, paid to elected officials and employees above a certain responsibility level should be published.

The committee should note that during the hearings I was asked to go back and look at what the previous practice had been. Basically, that's summarized at page 37. Until the coming into force of the provincial act, the actual salaries of public officials and public service employees who earned in excess of \$50,000 per year were published annually and the threshold test had been in practice in the province since the early 1950s. Prior to that, actual salaries of all public servants were publicly disclosed.

**Mr Hope:** When the \$50,000 was used, was that the total benefit? Would that include salaries and benefits or did that just include salaries?

**Mr Elston:** It would probably be salaries.

**Mr Hope:** It's actual salaries of public officials.

**Ms Swift:** It reads "actual salaries." I don't recall specifically, but certainly the salaries were in excess of that amount.

**Mr Elston:** The interesting thing about some elected officials now is that they have a salary plus a tax-free allowance plus benefits, and there also could be per diems. In lots of municipalities and in lots of school boards, it approaches nowhere close to \$50,000. In fact, that would mean for a good number of the areas that you might just indicate, if you adopted a threshold, that there would be no printing of salaries for very many people, maybe two or three people that I might know of in most of the circumstances. I think most people now are looking at disclosure of the elected officials and public servants.

**Mr Wiseman:** Do you include all public service or do you just include a group in a category? How do you define this?

**Mr Elston:** There have been rather interesting discussions in my area by the ratepayers in several municipalities wanting to know what the full bill is for people who are employees, the people who are elected officials and the people who are independent contractors. Sometimes they buy service from another municipality for a bylaw enforcement officer or for a weed inspector or any of that, and the only way you can get a full picture is by putting all the pieces together.

There's a real drive now, in the public that I represent anyway, and I think in a lot of areas, for people to know

where their tax dollars are going. For instance, in this case, it's suggested that we put on a floor of \$50,000. There are lots of expenditures in small municipalities that don't get nearly that high, and you still don't have an understanding of the payments that are going out.

**Mr Wiseman:** I'm still a little bit concerned about where you draw the distinction, how you would draw a line.

For elected officials I have no problem. I think there should be no limit on that. Whatever an elected official makes in any category should be public.

I start to get a little nervous or a little worried about the public official who lives in a community and is only making \$30,000 or \$35,000 or something. Do we want to publish those names as well, or \$20,000 or people below that? I wonder whether it wouldn't be better just to publish a category or something and leave the publication—the private members' bills that have been debated have talked about the top five or top six or something, and not everybody by name. I wonder if that wouldn't be an invasion of privacy. When does it stop being an invasion of privacy and a public right—

**Mr Elston:** Once you decide that one salary is to be given and not another—I mean, it is an invasion of privacy. There isn't any question one way or another. The issue is, I work for the corporation of the town of Walkerton and I happen to be number five, so I end up, at \$35,000, being printed. The next one, being paid \$34,900, being number six, doesn't get printed. No matter where you do it, once you decide that you're going to say one employee is to be divulged, then there is no question about what your principle is: Your principle is to divulge. The question is then, how many names do you want divulged? There's no consistency in the logic if you say it's an invasion of privacy to print the name of a person making \$20,000, so we won't do it, but if they make \$22,000, it's not an invasion. There is no logic there.

**Mr Hope:** Murray's right. Where do you draw the line? Where is the benchmark? Who do you say we cover and who do you say we don't cover? The question is always that individuals should have the right to know what's going on in their communities. Without getting at exact dollar figures, there are ranges you can use, and you can minimize the ranges or be more definite. You won't pinpoint the exact dollars. Let's say you use \$5,000 intervals. From zero to \$5,000 is one pay category; from \$5,000 to \$10,000 is one. A couple of thousand here or there—at least it closes up the gaps, gives you a little bit more definition.

When you're talking about the word "benefits," it would be a paper nightmare to try to figure out what benefits are there. If you're talking about health care benefits, whether it be dental or other things, it becomes a nightmare. I'm talking about cash monetary benefits. I believe they ought to be publicized and they ought to be incorporated in the full package. Instead of getting, for instance, the health care coverage that every other employee is receiving in the municipality, because you get it from somewhere else, you could receive a cash nominant—you know, whatever it costs, \$35 per employee, you can get that automatically on your cheque.

I believe that ought to be reported if it's done in the cash value aspect.

I wouldn't want to see everybody going into their benefits and trying to calculate, "Well, how much do our actual benefits cost?" because that is produced by municipalities. "Our benefit program for our employees costs X amount of dollars. This is our benefit program."

On the monetary issue, I know people would like to see exacts, but I would love to see where we can get to a closer gap, back to the publication, so that people get a better understanding, but to put it into \$5,000 intervals. That would be my own suggestion for the employees.

As far as the elected officials are concerned: to the penny. You've got to separate the elected officials from the workforce, from the employees. I would say that for the elected officials, you categorize everything. They do it for us and I believe it ought to be a standard practice; what they do to us, they do across the board.

But for the employees aspect, in order to make sure that you're informing the public, number one, and, number two, you're trying to protect—instead of trying to draw whether it's \$30,000 or whatever the number is, it's in \$5,000 intervals. That would deal with a contract employee who might not be a full-time employee but for six months or for four months makes \$30,000. That becomes information to the general public. I'd say that would be the safer way. It's only my opinion, and I know it doesn't fall into the four categories that you have here.

**Ms Swift:** That's fine. I just didn't think of it.

**The Chair:** Mr Sutherland. We're coming close to 6 o'clock.

**Mr Sutherland:** I would agree with Mr Hope, except I think it should be \$10,000 intervals rather than \$5,000.

**Mr Elston:** That doesn't tell you much.

**Mr Sutherland:** Okay, whatever. I'm just pointing that out, but I think his comments are right on.

**The Chair:** Mr Wiseman, you get one more.

**Mr Wiseman:** I tend to agree with Mr Hope as well. I think what we should be looking at is maybe a combination of an amount level and a responsibility level, in that if you've got the CEO of a town, from one area, they should have their salary revealed. What might happen, though, is that when people find out what the others are making, there might be a real competition to see who can

get their salaries to move up.

**Mr Elston:** Believe me: People who have to know know the general vicinity of salaries for the purposes of contract negotiations.

**Mr Wiseman:** But I think if there's a responsibility level and also a salary level and you mix them, then the broader group of public service could be delivered in categories as opposed to individual names.

**Mr Elston:** From my standpoint, here's a very interesting case. I'm negotiating my contract. Somebody else has received a 1% increase, but when you apply, for instance, to see what my salary is, if you give me a range of \$10,000, I can get two or three 10% increases, let's say from \$30,000 to \$40,000, before it looks like I've moved one iota. That's a very difficult thing to deal with in the public if you're trying to find out who's doing what. That's the whole issue these days: who is doing what. In terms of fairness, there's a whole series of problems that you confront that leave a potential mischief there if you do it that way. That's why I'm not intrigued by the range. The range is still problematic in—

**Mr Sutherland:** But who needs to know? The taxpayer needs to know what we're being paid.

**Mr Elston:** I was just listening to the minister, who wanted this done.

**Mr Sutherland:** Yes, rather than necessarily the others.

**The Chair:** It being 6 o'clock, maybe we'll have to come back. Sleep on this one, Murray, okay?

**Mr Elston:** I've got more ideas.

**The Chair:** Lisa's got some information she'd like to ask the committee.

**Clerk of the Committee:** Just a request of the committee: Because this is a confidential report, only members can leave the room with it. It would greatly help the Hansard editors if we could release a copy to them so they could edit the transcripts that were taken of today, if there's no objection from the committee.

**Mr Hope:** No objections. Probably the document's out anyway.

**Clerk of the Committee:** Thank you.

**The Chair:** This committee's adjourned till next Wednesday.

The committee adjourned at 1802.











## CONTENTS

Wednesday 18 May 1994

**Draft report: Municipal Freedom of Information and Protection of Privacy Act . . . . . M-307**

### STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

- \***Chair / Président:** Hansen, Ron (Lincoln ND)
- \***Vice-Chair / Vice-Président:** Wessenger, Paul (Simcoe Centre ND)
  - Dadamo, George (Windsor-Sandwich ND)
  - Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)
  - MacKinnon, Ellen (Lambton ND)
- \*Mathysen, Irene (Middlesex ND)
  - McClelland, Carman (Brampton North/-Nord L)
  - Morin, Gilles E. (Carleton East/-Est L)
  - Sterling, Norman W. (Carleton PC)
  - Sullivan, Barbara (Halton Centre L)
- \*Sutherland, Kimble (Oxford ND)
  - Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)

*\*In attendance / présents*

#### **Substitutions present / Membres remplaçants présents:**

Elston, Murray J. (Bruce L) for Mrs Sullivan  
Hope, Randy R. (Chatham-Kent ND) for Mr Dadamo  
White, Drummond (Durham Centre ND) for Mr Paul Johnson  
Wiseman, Jim (Durham West/-Ouest ND) for Mrs MacKinnon

#### **Also taking part / Autres participants et participantes:**

Management Board of Cabinet:

Platt, Priscilla, legal counsel, freedom of information and privacy branch  
White, Frank, director, freedom of information and privacy branch

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** Swift, Susan, research officer, Legislative Research Service





M-21

M-21

ISSN 1180-436X

**Legislative Assembly  
of Ontario**

Third Session, 35th Parliament

**Assemblée législative  
de l'Ontario**

Troisième session, 35<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

Wednesday 1 June 1994

**Journal  
des débats  
(Hansard)**

Mercredi 1 juin 1994



**Standing committee on  
the Legislative Assembly**

**Comité permanent de  
l'Assemblée législative**

**Municipal Freedom of Information  
and Protection of Privacy Act**

**Loi sur l'accès à l'information  
municipale et la protection  
de la vie privée**

Chair: Ron Hansen  
Clerk: Lisa Freedman

Président : Ron Hansen  
Greffière : Lisa Freedman

*50th anniversary*

**1944 – 1994**

*50<sup>e</sup> anniversaire*

### **Hansard is 50**

Hansard reporting of complete sessions of the Legislative Assembly of Ontario began on 23 February 1944 with the 21st Parliament. A commemorative display may be viewed on the main floor of the Legislative Building.

### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats a 50 ans**

Le reportage des sessions intégrales de l'Assemblée législative de l'Ontario, fait par le Journal des débats, a commencé le 23 février 1944 avec la 21<sup>e</sup> législature. Une exposition pour marquer cet événement est étalée au premier étage de l'Édifice du Parlement.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'Index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.





## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLY

Wednesday 1 June 1994

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 1 juin 1994

The committee met at 1548 in room 151.

## TOWN OF ORANGEVILLE LEGISLATION

**The Chair (Mr Ron Hansen):** As the first order of business, we have a letter dated May 27 to the Chair from the Clerk of the Legislative Assembly. He's actually coming to this committee. He writes:

"The town of Orangeville has requested that standing orders 80(e) and 87 be suspended in so far as this particular proposed legislation is concerned.

"Therefore, since the application does not comply with the standing orders, I am referring the application, pursuant to standing order 81, to the standing committee on the Legislative Assembly to consider the town of Orangeville's request for suspension of standing orders 80(e) and 87."

I believe the town of Orangeville wants to have this put through before the House rises so they will have everything in place for an election come November. Mr Sterling, you have something on this issue?

**Mr Norman W. Sterling (Carleton):** Basically, this is waiving notice. The issue itself will be decided by another committee of the Legislature in terms of a private bill. Therefore, I have no objection to waiving notice in this particular case in order to let the residents of Orangeville know what the exact composition of council will be in the upcoming municipal election. They're not changing the number of people on municipal council.

I don't know whether we're empowered to waive. I see the clerk nodding that we are empowered to waive.

Therefore, I would move that regarding the town of Orangeville private legislation to confirm composition of council, standing orders 80(e) and 87 be suspended.

**Mr Gilles E. Morin (Carleton East):** I have no objection to the motion, except that I'd like to know if we are creating any precedent. Is there any background on this where we had to face the same situation? Are we opening—

**The Chair:** A can of worms?

**Mr Morin:** Exactly. Are we creating problems? That's what I'd like to know.

**Clerk of the Committee (Ms Lisa Freedman):** A number of years ago I did clerk that committee and we had a similar situation where there was an application that did not comply with advertising. It was slightly different. They had advertised but not for the full four weeks, and that did come before the Legislative Assembly committee and the Legislative Assembly committee did waive the requirement for four weeks of advertising.

So this is not the first time a situation like this has come before this committee.

**Mr Morin:** Therefore, I see no problem at all.

**Mr Jim Wiseman (Durham West):** Just a couple of things: Would this require legislation in the Legislature for this to be enacted, the waiving we're talking about? Would it take a motion in the House?

**Clerk of the Committee:** I can check into that in the next few minutes. I don't believe it would. There are two parts. I don't believe 80(e) would. As to 87, if it's introduced quickly, it will probably be on the order paper for five days before it's actually scheduled for committee anyway, so there probably will not be any need to waive that standing order. If there is, it would require unanimous consent of the House.

**Mr Wiseman:** Do we know if this has been discussed among the House leaders at all to determine whether this can be proceeded with and in what way?

**The Chair:** We don't know that as yet. The other question is, if we recommend today that we go ahead next Wednesday, will the town of Orangeville put an ad in the paper saying this is going ahead next Wednesday and the reasons it's been waived etc, that it's come to this committee? I think residents out there should know what is going on. Would that be something that should be considered?

**Clerk of the Committee:** All this committee can do is recommend that we waive the advertising. It would then go back to the private bills committee and it would deal with that in the way it would with any normal application. There wouldn't be any requirement for them to put anything in the newspaper and it would be up to the private bills committee to decide when it would actually be scheduled. It may be next Wednesday or it may be two or three Wednesdays from now.

**The Chair:** I see. It wouldn't be coming to this committee to be heard. It would still go to private bills.

**Mr Wiseman:** In that case, I would like to have some time to look at this and determine what the ramifications are, because I've just seen it for the first time now.

**The Chair:** All of us have. As the clerk has said, this has been done before. As I said when I started, the reason is because of the election coming up in the fall and they'd like to have everything in place.

**Mr Wiseman:** I understand that and I understand the problem they have. What I don't understand is: Why is it coming to us on June 1? Why did it take this much time to get here? What was the council doing before this? And I don't know what it's going to do in terms of



legislation and where it's going to go on the floor of the House and what it means. I'm not going to turn around and say yes to something I don't have any clue about in terms of its ramifications. Do we need an immediate decision at this point, or can we have at least some time to determine what this means?

**The Chair:** Maybe while the clerk is checking into it, we can revisit this a little later on, keep the motion active. We can pass Mr Sterling's motion at a later date when we have this other information and the committee's fully aware of all the details.

**Mr Kimble Sutherland (Oxford):** I just want to ask a couple of things. Mr Sterling has put his motion on the floor. It seems to me that either we've got to wait a few minutes, in terms of a recess, for the clerk to provide us with the information to Mr Wiseman's question, or we've got to vote on the motion, or we've got to have some formal process to approve deferring it, correct? Those would be the options as far as I'm concerned.

**The Chair:** Mr Sterling had to step out for a few minutes. Maybe we could have a recess and get that information back.

**Mr Morin:** I can understand why Mr Wiseman would ask all those questions. I understand his point of view. It's very difficult for us to speculate about why the town of Orangeville delayed, why it waited so long, why it procrastinated. I'm sure the answer must be very simple. Would it be worthwhile to ask the secretary to come down here and give us the explanation?

It seems to me very simple. They are not changing in any way the number of politicians in the town of Orangeville, so it's only a formality. I understand there is a precedent, that this committee has already approved that type of thing. I hope we don't make it too complicated. That's my concern.

**The Chair:** Mr Wiseman, if you wanted to ask these questions, if it's next Wednesday that they appear before regulations and private bills, they can be put forward and the committee at that time will decide whether it's going to pass the legislation. We're not saying here that we're going to pass it automatically. It still has to go to committee. It is just waiving the advertising period so they can get this into the House before the House rises.

Would you be satisfied with coming down to the committee and asking those questions next Wednesday, or whenever it's scheduled—it could be a week later—before, let's say, June 23?

**Mr Wiseman:** I am still not comfortable with waiving the time period for them to advertise so they can get full democratic participation of the people of their community involved in this. I'm trying to read through this at the same time this discussion is going on. I don't know if this is a contentious issue in the town, I don't know if there are people who would object to it. By being asked to make this decision now, would I be circumventing the rights of people to be notified that this is being debated and discussed in the town? And what would that mean in terms of the impact on us, and in this place being criticized for not taking due process and due consideration of their concerns?

**The Chair:** Maybe it's just that it's taken a little while before they've come through. I think page 3 has quite a few of the answers you're looking for, Mr Wiseman. It says:

"The town of Orangeville feels that its residents are satisfied with having council composed of the mayor, reeve, deputy reeve and six councillors. This is based on the question on the ballot in 1991, where 68.18% were in favour of the current system, together with the fact that in the proceedings that were before the Ontario Municipal Board to confirm composition of council, advertising was done, which resulted in only one objection being filed. The objection related to which legislation would govern, the Municipal Affairs or the constituent legislation. The town of Orangeville, by taking the steps of having the private legislation passed, will be dealing with that concern."

I don't think there's much question that the citizens of Orangeville, unless they've all moved out and there are new residents there, have already had it on the ballot in 1991 and they would like to get this done before the next election.

I don't know if I'm interpreting correctly, but that's what I read out of that, on page 3.

**Mr Wiseman:** I would still be more comfortable with having time to digest this and discuss it. I would prefer to leave this until next week.

1600

**Mr Murray J. Elston (Bruce):** If I might volunteer, it's not uncommon for the House leaders to deal with some of these requests; they may come directly, or indirectly from this group of people. Bearing in mind the time limitations on this, maybe if we had a chance to discuss it tomorrow at House leaders and perhaps between now and then some inquiries might be made by some of the officials—it seems to me that we won't be hazarding a mischief here, particularly when the citizens have voted in 1991.

I guess the question that rests with us is why we've waited this long. But that's not our concern. Our concern is, is there a mischief? Maybe if we were allowed to talk about it at House leaders and get some input, we could probably agree to have action taken.

My predisposition to this, by the way, is that we should allow it to go ahead, particularly when the Clerk and others are following the directions of the democratic elections. But let's talk about it there.

**The Chair:** Maybe we could add to the amendment Mr Sterling had put forward and somebody could make a motion that it go to the House leaders, and if it's passed by the House leaders—

**Mr Randy R. Hope (Chatham-Kent):** You can't. There's a motion already on the floor.

**The Chair:** We could amend the motion.

**Mrs Ellen MacKinnon (Lambton):** I'm sorry. I was tied up with the press. Can you please tell me what the motion is?

**Clerk of the Committee:** Essentially, we have a letter from the Clerk. Any private bill that doesn't comply with



the standing orders gets referred to this committee. We have a bill that's been referred to this committee because the applicant has not advertised for four weeks and would like that waived. Mr Sterling has moved a motion that we do waive that requirement. They've asked for another requirement that we waive the five days that it has to stay on the order paper. He's also moved that we waive that, except that would require unanimous consent of the House, whenever we waive that notice period. Mr Sterling has moved that we do waive the requirement for four weeks' advertising and for the notice.

**Mrs MacKinnon:** In other words, you're asking for two waivers?

**Clerk of the Committee:** Yes, but it's only within the competence of this committee to grant them one. The other one would require unanimous consent of the House.

**Mrs MacKinnon:** Therefore, it would follow that the House leaders' meeting tomorrow morning would be a proper place to go.

**Mr Elston:** For the one.

**Mrs MacKinnon:** For the second one, yes.

**Mr Sutherland:** I'm going to disagree with my colleagues here. We're the government of Ontario. We deal with a \$51-billion budget. To me, this seems like a pretty routine type of thing. There were a few technicalities. If you read through the letter and some of the history, it's not providing substantial change, in my view, that would undermine any democratic rights of the citizens of Orangeville. I think we should just do it and move on. We've got a lot of other significant issues to deal with in this entire Legislature.

**The Chair:** Okay. We'll just vote on the motion.

**Mr Hope:** I wasn't here either to listen to Mr Sterling's motion, other than to the second part of the motion, which is outside of our jurisdiction. The motion should be amended that we grant the waiver for four weeks of advertisement and that it be referred to the House leaders to decide on unanimous consent. That ought to be the composition of the motion. But with Mr Sterling not here, it's hard to deal with that.

**The Chair:** You can make an amendment.

**Mr Hope:** How do you make a negative to a positive motion? It's unparliamentary.

**Mr Elston:** You just strike out one part and say that it be replaced by a motion to refer the matter to the House leaders.

**Mr Hope:** Okay. I strike out the second part of the motion by referring the issue for unanimous consent to the House. I just didn't think it was parliamentary that you do that.

**The Chair:** Okay. Any debate on the amendment?

**Mr Wiseman:** Can I hear it again?

**Clerk of the Committee:** Just to clarify what we now have, Mr Hope is moving that we amend the second part of Mr Sterling's motion to delete that this committee approve the waiving of standing order 87 and refer that part to the House leaders. If that passes, Mr Sterling's motion would still waive 80(e) but refer the second part to the House leaders.

**The Chair:** Okay. Any more debate? All those in favour of the motion, as amended? Unanimous.

**Mr Elston:** And all those in favour of democracy?

**The Chair:** Murray, I've had enough of you this morning.

**Mr Elston:** All those opposed?

**The Chair:** We don't do that in that committee. Susan, how about updating us where we are?

#### DRAFT REPORT

#### MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

**Ms Susan Swift:** Perhaps before we get back to where we left off last week, I can just go back to a few things that were raised where I was asked to get further information or further discussion.

The first deals with the issue of the meaning of "in the custody or under the control of an institution," particularly as it relates to records that are held by a law firm, which records are created in the course of doing business under retainer to a municipal corporation. Mr Elston raised this issue. I've provided you with a copy of excerpts from a very recent order of the Information and Privacy Commissioner, order M-315.

At pages 26 and 27, the commissioner discusses the issue of whether those records are covered by the legislation—in other words, whether they are under the control of the institution—because they certainly aren't in the custody of the institution. The commissioner rules that they are under the control of the institution. In doing so, he reviewed the order that the committee has heard about already; that is, the order dealing with the situation where the employee had made personal notes during an interview. There were a series of 10 criteria or factors that the commissioner suggested ought to be considered in determining whether or not a record is in the custody or under the control of an institution.

The commissioner then goes on to cite the Solicitors Act, which in his view is also relevant to the issue of control. Basically, section 6 of the Solicitors Act indicates that the records which belong to a client must be delivered on demand to the client unless there are unpaid fees etc. Therefore, in the commissioner's view, documents which belong to the board which are in the custody of its solicitors are under its control as a result of that section.

Then the order just goes on to discuss what other kinds of records or what records belong to the client. That clarifies, I think, Mr Elston's question.

The second matter that I wanted to speak to you about again was the issue of the meaning of "substance of deliberations." You'll remember that on page 16 and 17 of the draft report, the committee was leaning towards, at least, recommending option A that's listed on page 17, which would expand the definition of the term "substance of deliberations" to include the records that form the basis of closed-meeting discussions.

The committee was concerned about the impact of that option in light of the bill that was presented to the House last week which would amend the Municipal Act provision in respect of closed and open meetings. There was



some concern that somehow option A might interfere with or might cause a conflict between the municipal freedom of information act and the change to the Municipal Act.

If you like, I have copies of that section of the bill that's been presented. Subsection 55(3) says, "Except as provided in this section, all meetings shall be open to the public." Subsection (5) says, "A meeting or part of a meeting may be closed to the public if the subject matter being considered is..." and it lists several items, including "personal matters about an identifiable individual, including municipal or local board employees."

So I don't think the option affects the authority at all to hold a meeting in public or in open session; it simply expands the definition of what the substance of the deliberation will be.

1610

The third item that was raised was with respect to the meaning of "public opinion polls." You'll remember that the commissioner recommended that this specific phrase be included in the act under the exemption that exists for advice and recommendations to institutions. You'll also remember that British Columbia and Nova Scotia both have that as an exception to their particular exemptions.

I have spoken to professional pollsters to try to get an idea of the difference between public opinion polls and focus groups, because I believe Mr Wiseman was concerned about whether or not they would be included in the definition. The essence of my discussions, really, is that public opinion polls are different from focus groups because public opinion polls are quantitative research tools—that is, they ask specific questions and get specific answers and then correlate those answers and extrapolate those to give an indication of the opinion of the public at large—whereas focus groups are more of a consultation and a qualitative research tool where people are asked open-ended questions like, "What do you think about this or that?"

The upshot of this really is that in terms of the BC legislation, which, as I indicated, has this provision, they also do not include in their act a definition of "public opinion poll" but have in their procedures and policy manual what they suggest would be a definition. I've handed that out to you as well. That's section 13 of the policy on advice and recommendations.

"A 'public opinion poll' is a survey which collects the opinions of a sample of the public on issues, and which usually contains statistical analysis on the results of that poll. The purpose of such polls generally is to extrapolate the information so that there is an indication of the opinion of a wider segment of the population."

Speaking to the acting deputy director of the information and privacy branch of the ministry in British Columbia, I was told that this definition has not yet been tested by the commissioner because the legislation is so new. It was her feeling that focus groups would probably not be included or not be caught by that definition because they do not extrapolate the information to give an indication of the opinion of the public at large but that it would have to be determined on a case-by-case basis, and that

where that information gleaned from focus group consultation acted like an opinion poll or was used like an opinion poll, it might be accessible under the act.

**Mr Sterling:** Why would it not be accessible under the act?

**Ms Swift:** The feeling was that it's more of a consultative thing. It's not statistically borne out, it doesn't give an indication of the wider public opinion, but it's just used as a smaller consultative tool. Of course, it may not be used that way and in fact can be used to develop policy and the like, and she said that in those situations it might be accessible.

**Mr Elston:** I was going to ask two questions pretty similar to Norm's, but it really is with respect to a focus group. I know it's a contained group, yet what you do is you take the material they give to you and the opinions they give to you and you extrapolate that either this is a settled way of doing things or, if you're looking at a paper—and you actually extrapolate that material to say, "This looks like diversion is acceptable." I'm thinking of anybody who has seen a draft policy paper go through any of these types of processes. People react to them and you extrapolate that reaction and say it's either going to be good, bad or it's indifferent or neutral.

Maybe it should be that we would make those available in any event. Maybe we should clarify it and say that we think they should be made available. If public funds are being spent at this level to do this stuff, then everybody should know it's going to be made public and then it's at an end.

**Mr Wiseman:** I wouldn't have any problem with that, except up to the point where the names of the people who are involved in the focus group would have to be kept under—I think we'd have to say that, because then some people might want to question, "Who was it, where did they come from and how did they get there?"

**Ms Swift:** It was suggested to me by the professional polling people I spoke with that if the committee wanted to move in that direction and to include focus group results, they might want to change the wording to "public opinion research," because it seems that "public opinion poll" is a term of art. But "research" would—

**Mr Hope:** It would catch everything.

**Ms Swift:** —catch everything.

**Mr Hope:** Even talking to a group of people would catch it. One is now left to the interpretation of lawyers about definition.

**Ms Swift:** That would have been true before as well. It seems it's always true.

**Mr Hope:** I thought we agreed to all this stuff.

**Ms Swift:** Those were issues that were left a little open-ended, I think.

I take it then that the committee agrees to option A on page 17, because that was the "substance of deliberations" item that I just spoke to you about. As I said, the committee was leaning towards that but wanted to be assured that it didn't impact negatively on the authority to hold a closed meeting. That's what the committee was leaning to last time.



**Mr Hope:** Okay. We'll lean all the way then.

**Ms Swift:** When we finished last week, the committee was still discussing the issue of the disclosure of the salaries of public officials and public employees. My understanding of the discussion so far was that the committee had agreed that salaries and benefits of elected officials ought to be made public and that they were still discussing to what extent the actual salaries and benefits of public employees ought to be made public. There were several options that were being discussed.

**Mr Sterling:** Have you got any options in the paper?

**Ms Swift:** Yes, Mr Sterling. On page 38 I've got four options. On the table last week was a fifth option but I can briefly summarize the four.

Option A essentially says, "The actual compensation including salaries and benefits paid to elected officials and public service employees should be published."

B says "the actual...salaries and benefits," but only of elected officials, not employees.

C suggests a threshold test; that is, a monetary threshold test—above \$50,000 or whatever.

Option D was the threshold "above a certain responsibility level."

The fifth option that was being discussed last week, at the suggestion of Mr Hope, was that there be not actual salaries but increments of \$5,000. So you would give a salary range, but a small range.

**Mr Sterling:** I favour option D, actual salaries of over a certain amount. I don't know if that's what that says. You say "responsibility level"; I say it's clearer if it's over a certain amount of money that the compensation package reaches.

**Ms Swift:** That would be C, probably.

**Mr Hope:** Yes, C is more what you're focusing on than D, which is where part of our conversation left off.

1620

**Mr Sterling:** That's right. I'm sorry, C is the one I would support.

**The Chair:** Mr Wiseman?

**Mr Wiseman:** C.

**The Chair:** Okay. So I guess we're going with C.

**Mr Hope:** I've got C with reservations. May I ask a question about the benefit aspect of it? Are we going to start calculating what a benefit costs? Are we going to deal with the remuneration? When you start taking in dental programs and everything else and you start to calculate that, you could work out to a calculation of \$20 an hour, when in actual terms the remuneration may be only \$15, depending on the benefit level.

I could see if there was remuneration in a monetary aspect which was considered a benefit, versus an actual benefit which is dental and other programs that might be provided, getting into that cost calculation. It really complicates the system. I just question that part of it when we deal with benefits. What is the definition of "benefit"?

**Mr Elston:** Generally, for the purposes of contracts and others, the benefit is the cost of providing the

purchase of group insurance or dental care or being in a plan for eye care, that type of thing. That is what is usually calculated; it's not whether an individual actually accesses \$4,000 for an orthodontist for their child or for themselves; it's actually calculated on the basis of the premium paid for that benefit. I would presume that's what we'd be looking at in this case: How much does it cost the corporation to carry this particular employee? I think that's what we're looking at: the actual expenditures and how you calculate that.

**The Chair:** You worked at General Motors, didn't you, Mr Hope?

**Mr Hope:** I worked at Rockwell. This complicates what you're trying to achieve. What the public want to know is how much is somebody receiving.

**Mr Elston:** No. How much is it costing the municipalities.

**The Chair:** What's it costing per employee.

**Mr Hope:** They can see that just in any general budget. It says it costs  $x$  amount of dollars for administrative staff. That's in every budget today. My understanding of what the general public was trying to do is getting actually at what individuals earn. If you want to find out how much it costs as a corporation to run, that's very simple: Just look at probably the top line of every budget and then the expenditures: wages and salaries. It's right there. That tells you what the total cost is.

**The Chair:** What are bonuses? Are they benefits?

**Mr Hope:** That's what I'm saying about the monetary benefit aspect of things.

**Mr Elston:** There haven't been too many bonuses given out in the public service lately.

**Mr Sutherland:** No, but still, that is the point: The bonuses are always a contentious issue as to how they're decided upon and how much folks get. Either you do work it out as being suggested, or you do what? You do gross salary and bonuses and try to do it as any specific monetary benefit that individual employee gets above and beyond what they're offering to all their employees?

**Mr Sterling:** I think the public have a right to know, as I say, over a certain amount, what it's costing their municipality to provide a certain service. That service in the form of an employee includes not only his or her salary but all the other trappings around it, if it's a pension benefit, if it's a dental benefit or whatever. I think they should know what that line is. If it's \$55,000 plus \$15,000 in benefits, then they should know it's \$70,000.

**Mr Sutherland:** I guess our point is, our goal is to make the information accessible. How do we do that without making it a burdensome challenge in terms of being provided? That's all.

**Mr Sterling:** I don't think it's a problem.

**Mr Sutherland:** Okay, if you feel comfortable.

**Mr Wiseman:** An electronic registry.

**Mr Elston:** It's not just that information be made available, but that it's understandable. I think what people like to do is not what Mr Hope suggested before, which was to have the lump sum; they want to be able to



differentiate between departments—departmental expenditures, who's operating an efficient department—and to be quite blunt, they want to know what a trustee is paid, how much they are receiving for what they do, and the same thing for councillors or reeves or wardens or deputy reeves. They really do want to know what their top officials are paid.

It's not just getting the number of the cost; it is, "How much am I paying each of these individuals to perform a job, and can it be done more efficiently and more effectively?" That's what they've got to decide in their own minds, in my view, in our current political circumstance, and that's what we have to be able to allow them to undertake if they choose to do it.

That's our test: Can you get the information, and is it understandable or is it severable into packages that allow them to make the decision about the effective nature of administration by departments and by the elected officials?

**Mr Sutherland:** From my standpoint, I'm not as worried about the elected officials, because I know that at the county council they've got to declare all their expenditures, they've got to put a report together at the end of each year, all the expenditures incurred by each councillor, whether that's trips to conventions etc, all that stuff.

It's a question of how you calculate it if you're doing senior officials. If you think they've already got that information and they work it out individually in terms of what it costs per employee, then the information is not that great a burden and I personally don't have a problem. I don't know about the rest.

**The Acting Chair (Mr Randy R. Hope):** Mr Sterling, you had some comments you wanted to raise?

**Mr Sterling:** If municipalities have been required to deal with pay equity and those kinds of things, this would probably be a cakewalk to figure out in reverse what each employee is receiving.

**The Acting Chair:** Any further comments? Can I make some?

**Mr Sterling:** You're in the chair.

**The Acting Chair:** The only thing I look at, to advertise the salaries, I need to know what this is going to look like. If we're saying to include salaries and benefits, what is the sheet that I and the general public will look at—because it's allowing the public information—going to look like? Is it going to say: "The overall cost for this one individual is  $x$  amount of dollars. His salary per year is  $x$  amount of dollars. His health care or dental plans or whatever are  $x$  amount of dollars. His pension contribution is  $x$  amount of dollars"? Is that the type of form we're looking at for the general public?

It's easy to say, "Salaries and benefits paid to an individual," but it can also be misleading to the general public if you just have the overall compensation there, including benefits, because they're saying, "You bring home \$80,000." "No, I bring home \$60,000, and \$10,000 of it is pension contributions and it's matched by the employer's 10%."

It's easy to make an easy statement of salaries and

benefits, but what's the information that is going to be provided to the general public for understanding? If you've dealt with wages and benefits before, usually the average on a \$15-an-hour job is around \$5 to \$6 in benefit costs, depending on what type of pension programs you have. It can be misleading to the public, and the important part is to make sure that it's there.

I can easily support salaries and benefits, but what's it going to look like when it's on a produced document? Is it going to be misleading to the public?

**Mr Sterling:** Presumably the employee or their representatives have the opportunity to negotiate how much is going to be benefits and how much is going to be salary. The interest to the taxpayer, in my view, is what the total package is. I don't care whether it's \$20,000 in benefits and \$60,000 in salary or \$80,000 in salary and no benefits. I presume that's a choice the employee and their representatives have made, that they are making a package of that amount of money. I think it's misleading to the public to say that the person is getting \$60,000, though.

1630

**The Acting Chair:** Mr Sterling, on exceeding a particular amount should be published, what particular amount would you see as the benchmark for publication? As you're now talking about direct salary and benefits, what particular price range would you be looking at as the benchmark for publication?

**Ms Swift:** Can I just clarify before we jump in on this? My understanding is that the committee will support the recommendation that the actual salary and benefits of whatever level for elected officials be made available. Is the threshold amount we're talking about for the public service employees?

**Mr Sutherland:** Yes.

**Ms Swift:** All right.

**Mr Sterling:** I'm flexible, \$40,000, \$45,000, \$50,000, I don't care. Somewhere in that range is what I was thinking of.

**Mr Sutherland:** About \$50,000 sounds reasonable to me.

**The Acting Chair:** It doesn't to me.

**Mr Elston:** How low do you want to go?

**The Acting Chair:** I want to go \$30,000, but I was looking at direct salary when I was looking at \$30,000 and above.

**Mr Sutherland:** If you're talking of salary and benefits, then you want to go higher.

**The Acting Chair:** But that can also be misleading. That's why I'm getting at the point, what is actually being produced? I can make \$25,000 and have \$10,000 of benefits programs per year. It doesn't take long to ring up benefit charges.

**Mr Sterling:** I move that the salary and benefits level be anybody over \$50,000, that where it exceeds \$50,000, it be published. That would be my idea, just to resolve the issue.

**Mr Wiseman:** If you wanted to, maybe we could just separate them and say, "This is the salary; this is the



benefits," and if the total of them is above a certain amount, then if you want, we could do that. Separating them seems to make some sense.

**Mr Sterling:** As long as they're both there, it doesn't matter. If people can add them, then that's fine.

**The Acting Chair:** We're trying to establish that right now. The threshold in Mr Sterling's proposal is \$50,000.

**Mr Sterling:** Salary plus benefits.

**Mrs MacKinnon:** "Salary plus" or "including"?

**The Acting Chair:** Both.

**Mr Sterling:** Are they not the same?

**Mr Elston:** The total package, his total addition of salary and benefits, is at \$50,000.

**The Acting Chair:** So we're at salary plus benefits, \$50,000 benchmark. All in favour? Opposed? Carried.

**Mr Elston:** Can I ask a question with respect to contracts and how they're treated? Sometimes people will attempt temporary contracts but have people on for a long time. Are contracted obligations by individuals usually available for inspection by the general public?

**Ms Swift:** I don't know. I see Mr White here and Ms Platt. We could ask them. Maybe they know.

**Mr Elston:** If I'm not an employee, I might be under contract for delivery of services. The issue is, it seems to me, that we don't want people necessarily to be precluded from discovering that there is a contracting by a municipality or a board or whomever for services for individuals, merely because the person is not an employee—because right now we're talking about elected officials and employees—or that in fact the contract is being let in a manner which allows them to defeat the \$50,000 limit.

In other words, we might have somebody who says: "We'll engage Murray Elston to do a contract. We'll pay him \$49,900, total package, and he'll work for us for nine and a half months, and then we'll give him another contract three months down the road." In each case, although I'm delivering personal services on a regular basis, I might very well avoid discovery of my total contract. I might be included in a lump sum of consulting services or something, but people would be unable to decipher that I was being paid in that way. I want to make sure that there isn't a loophole that can be used to evade the level of service.

**Mr Frank White:** Actually, on that same section we're dealing with now, 14(4), in the section right below it, I believe, there's an exception to the privacy provisions where you can disclose a contract for personal services, including the financial details. If you entered into a personal services contract, you would be caught in that, and then if you entered into a consulting arrangement, you'd go into the third-party exemption. That most likely wouldn't meet the criteria of the third-party exemption, so you'd get the amount per consulting contract also. I think you've caught all the situations.

**Mr Elston:** That answers my question. Basically, people could get that information under those other sections.

**Mr White:** Yes, now they can get it.

**Mr Elston:** Okay, that's good.

**The Acting Chair:** Where did you say that was?

**Mr White:** Subsection 14(4).

**The Acting Chair:** It's in the bill.

**Mr Elston:** It's in the act.

**The Acting Chair:** Or in the act, but it's not in our recommendations.

**Mr White:** It's right in the statute, 14(4)(b).

**Mr Sutherland:** Just one more question: In the recommendation, because we use the terminology "should be published," what we're saying is that we're putting in a requirement that each year they must publish these rather than someone going through and making a request to access them? Is that correct?

**Mr Elston:** Yes.

**Mr Sutherland:** Okay, I wanted to be clear on that.

**Mr Sterling:** In effect, what happens is that in the personal contract it's not a limit of \$50,000 and up. You can get any personal contract, whether it's for \$200 or \$200,000.

**The Acting Chair:** Mr White, under that section of the act that you just indicated, that is not a publication, though. If you ask for the information, then are we treating it equally? Should it be a publication versus the actual—I wouldn't know half the time who is on a contract. Just trying to work with Mr Elston's comments and what he brought forward to public information and how to—if you don't know the person's there, you're never going to know what to ask for. I'm just raising with the committee, should it then be a follow-up recommendation that it also be a part of the publication process?

**Mr Elston:** In this case, I would agree with Mr Hope that we should probably treat them equally. When there are special arrangements made for personal service contracts, I think those are in a category that should be printed along with the rest of personal services that are being considered as full-time employees or elected officials. I would support that; I don't know about the rest of the committee, because we didn't spend much time on this.

**Mrs Irene Mathysen (Middlesex):** I would like to raise a question regarding the word "should," having just been through the Bill 75 wars and the most recent aberrations thereof, that being the city of London quibbling over what should and must be. I wonder if it might be prudent, if we intend these to be published, to say "must be published," so that we avoid any of the dance.

**The Acting Chair:** Seeing no rebuttal, I guess they've accepted your point of view. Any further comment? Seeing none, all those in favour of Mr Elston's recommendation for publication? Opposed? Unanimous. Carried.

Do you want to move on to the next one?

**Mr Sterling:** On the public service contract, what are we asking there be a publication of in this instance?

**The Acting Chair:** We're asking that there be a publication of the act.

**Mr Sterling:** No, because, you see, you could have a

personal service contract for three weeks, and if you just say how much is being paid and you don't explain that it's for three weeks, it may seem reasonable; it may seem exorbitant if it's a personal contract for five years. I'm just asking, what are we requiring them to publish in terms of the personal service contract? The whole contract? The remuneration part of it?

**Mr Elston:** What I was getting at when I first asked the question about the employees was basically the identification of the personal service contract's amount, a word or two about what it is. It might be temporary infill for clerical service or it may be a consulting service. It should be at least identified so that people could make a judgement, without delivering the whole contract. I'm just looking at identification of the individual, the contract and the amount so that people can decipher some information on their own.

If they want to ask for more information after that, I think that's up to them, but they then at least could be armed with enough so that they could identify what they would be looking for, and then the act is very specific about what they could get and what they couldn't get on the contract.

1640

**Mr Sterling:** I would prefer an identification that there has been a personal contract and that if anybody really wanted the details, they could go and get them. Just because of the nature of the kinds of arrangements, ideally you'd like it annualized and all those other kinds of things, where they're included, just the actual person or the person plus their assistant or whatever. I don't know; I'm just thinking of how they're going to produce this thing on a piece of paper.

**The Acting Chair:** You can do one or two folds. You can produce the name, as you suggested, those under \$50,000, and then if you're curious about how many weeks it is—what I'm trying to do is create equal.

**Mr Sterling:** "Under \$50,000" doesn't mean anything in my view, Mr Hope, because the time span could vary dramatically. It could be \$50,000 for two weeks or it could be \$50,000 for two years. If you try to annualize the whole thing—I agree they should be equal and they should be public. It's just that without printing the whole contract, the whole arrangement, how do you really represent what it is? It's somewhat easier with employees because there are the benefits plus salary on an annual basis; that's it. In this situation, I'm not sure how you'd present that information in three or four lines.

**The Acting Chair:** Susan, do any other jurisdictions you know of look in this area of contract work, especially under that section of the act?

**Ms Swift:** I don't know, Mr Hope. The only thing I can think of is to go back and see how others might do it. I really haven't turned my mind to this at all.

**Mr Sterling:** If you could put your mind to how they could present it and then put that in the recommendations, I would be quite willing to accept whatever was reasonable; for instance, the name of the contractee, the monetary consideration and the general nature of what the contract's about. If you're going to require municipalities

to produce this thing, you have to be fairly specific as to what they are to produce.

**Ms Swift:** What it has to consist of. I'll look at that and come back with something for the committee.

The next issue is sort of a corollary to this, dealing with severance, termination and early retirement benefits. The issue and the problem that have been presented are that although the financial terms of severance, termination and early retirement packages paid by institutions to ex-employees are not considered to be personal information, despite that, the terms of those agreements can be sheltered under section 6; that is, the exemption for matters that are dealt with in a private meeting.

This issue has been dealt with by the Information and Privacy Commissioner and the commissioner found that the institution, having met the criteria necessary to hold a meeting in private, could claim the exemption to protect the financial terms of a retirement agreement from disclosure.

In a postscript to this order, the commissioner stated that the retirement agreements warrant a very high degree of public scrutiny for several reasons and urged that this be dealt with at the legislative level. The commissioner indicated that indeed he found it unfortunate "if institutions began to use this provision to routinely shield the financial terms of such agreements." The suggestion has been then that there are several options for the committee, first, "that the act be amended to ensure"—

**Mr Sterling:** Which page of the draft report are you reading from?

**Ms Swift:** Page 40, "Options for Committee Consideration:

"Option A

"That the act be amended to ensure that the financial terms of retirement, severance, and termination agreements are routinely accessible to the public."

"Option B

"That the act be amended to ensure that the section 6 exemption cannot be used to shelter the financial terms of retirement, severance and termination benefits paid by institutions."

Option B is slightly more explicit than A and it deals specifically with the problem of sheltering under section 6.

**Mr Sterling:** You say B is more explicit?

**Ms Swift:** Yes, because it deals specifically with the problem that was addressed before the committee, that is, that section 6 is used to shield the financial terms of these agreements.

**Mr Hope:** If section 6 be the problem, then option B should resolve that problem, and I move option B.

**Mr Sterling:** I think they should be published.

**Ms Swift:** The alternative is that you could combine both of these, actually. I don't think the options are necessarily exclusive. You could combine both.

**Mr Sterling:** One of the things the freedom of information commissioner said to us is that the more we can say to the public, "This is your right to have this and



it's going to be published and it's going to be in a book somewhere," then there's no request for the municipality to produce this information, and it's solved, and there it is. So I would like a combination of A and B.

**Mrs Mathysen:** In light of the fact that we are moving more and more towards the publication of salaries of highly placed executives, I think it would make sense to have a combination of A and B inasmuch as some of these retirement packages can be quite rich and I believe the public has this right to know when those arrangements are arrived at.

**Mr Hope:** A question to Mr Sterling: We've protected those under the \$50,000 benchmark; what if none of these come under the \$50,000 benchmark on publication? Are you talking about retirement publication, or are you talking about protecting those under the \$50,000 and publicizing those over the \$50,000 benchmark? I'm just trying to balance out what we said in the first part of this whole process, actual working versus going to retirement or severance or termination benefits. I just wonder where the cutoff is for publication. Are you going to publish somebody's \$40,000-a-year pension they're receiving, yet you wouldn't publicize the \$40,000 pay they were receiving when they were employed?

**Mr Elston:** Mr Hansen and Mr Hope, I think one of the things that would occur is not that you would necessarily say their pension was  $x$  number of dollars, but you would want to tell people if you went into this that they got a lump-sum payment, that if required—and under some circumstances it does happen—people are bridged to pension, which actually costs a few dollars as well to the organization.

What you would basically do, and I would recommend it be done in each case of a retirement or severance package being offered, whether or not the person was officially above the \$50,000 benchmark that we've got now, wherever there is a severance, for whatever circumstances, you take the cost to the organization of the contract for the termination, whether by retirement or whatever other method. We would talk just about the actual costs, not what the pension plan would pay but what it would cost to get the pension plan to a position to pay, and a whole series of other items.

What is out of pocket for the municipality to sever or terminate or for the retirement? That's what we're after here: If it costs me \$100, I want the public to know that it's going to cost \$100 to do it. Right now, we've already paid the money, for the last 15 years, into the pension plan; that money is already there and that pension plan earns the money for payment of this individual if they participate in it. But this year, to sever this person for whatever reason, it costs us \$100. That's the number that has to be made available and I think it has to be made available wherever there is a special arrangement, because that's really what we're talking about here, special arrangements being public information.

1650

I provide one point of interest, to me in any event: By making all of these severances or termination contracts available for publication, do we preclude some agreement being reached from time to time between individuals and

their employer? Sometimes the anonymity of the severance package helps some employees and employers to come to an agreement or an arrangement around a dispute as to the conditions under which an individual has left. The sections put in almost all contracts of termination that say, "The employer and employee agree they will not disclose the terms of this contract," are sometimes the most attractive part of it to both the employer and the employee if they don't wish to be in the courts and have a long, drawn-out battle.

My overriding concern is that while we want all of the details of the finances to be included in this, we have to consider the fact that it may turn out to have a dampening effect upon the reaching of an early resolution of a contentious employment or workplace matter.

**Mr Sterling:** I recognize the problem Mr Elston has identified, and I've thought about it as well, but the overriding concern I have is that you have to go back to the fact that these are taxpayers' dollars. They can't hide behind closed doors and make a deal where nobody knows what's happening when they are taxpayers' dollars. The taxpayer has the right to know what kind of deal was struck. I don't think we had any witnesses dealing with this issue, that I know of.

I'm comforted by the fact that this is a report and that it has to go through two stages. One stage is government drafting legislation to change it, where there would probably be consultation, and second, there would be another stage, a legislative stage, where this would be put into an act and there would be another opportunity for people to raise this issue and show how damaging it could or could not be. This is the first of perhaps a three-stage process. Those other two stages may never happen, but I think we should stick to saying it's got to be put out on the table for everybody. We have to go to the accountability to start with, and then if there's any backing off to do, you'd do it at a later date.

**Ms Swift:** Does the committee want to red-flag it as an issue and stick with the recommendation?

**Mr Sterling:** I'd rather recommend it.

**Mr Hope:** I'm going to disagree with Mr Sterling. After listening to some of the conversations and listening to what was presented at the committee, I'm in favour of option B, which specifically highlights the problem area.

Mr Elston raised some good concerns. I've been involved in a number of those negotiations where, instead of going before boards, we've severed relationships and we've made sure there wasn't public information, for the best interests of all parties, because there were terms and conditions met under that agreement. I feel it would damage situations.

I'm going to disagree with Mr Sterling and I'm going to stick with option B, which specifically highlights the area of problem the commissioner brought out, which was section 6 being used to escape the process, and not to combine both option A and option B.

**Mr Elston:** Basically, Norm has a good point about this being a report. That being the case, I think we should at least raise the issue about whether people are being prevented from entering contracts of termination. They



should be discussed further before the final draft of the bill is brought forward, but at the moment I think we are probably closer to B than the combination. I think B does do enough for us to get the information out. Maybe we could put a bit of a rider in, saying, "We didn't investigate this one very thoroughly as to the effect this will have on contracts, and we recommend that further discussion be held by the various authorities as we consider the legislation's amendments."

**Mr Hope:** I think it's going to take more dialogue, because when I read "agreements are routinely accessible by the public," it raises a lot of red flags in situations, and to look at the other part where there was a definite problem under section 6 of the bill.

I have a hard time putting option A as part of the total recommendation because of legalities. Most of the time you will see this is in the termination process, not so much in the early retirement, yet I've seen golden handshakes too that have given people the opportunity to move out.

My only option would be B, which would clear the problem that was identified in this committee.

**Ms Swift:** My understanding from what Mr Elston had just said was that B seemed to be acceptable, but with the proviso that there be some discussion about the area of difficult and contentious disputes; that this might arise in the future and there ought to be some attention paid to it at some point. In other words, to just red-flag the issue but the committee to go with option B.

**Mr Hope:** We don't have unanimous consent yet.

**Ms Swift:** No. He wanted to combine.

**The Chair:** Another thing on disclosures is a point you've made. If this agreement between an employee and an employer becomes public knowledge too much, when another person is terminated all of sudden he says: "But he got \$100,000 and I'm only going to get \$20,000. I don't agree with it." After a while, it becomes a factor of how high we go—comparisons.

**Mr Elston:** I really think we have to move on this. If we could get this decision made at this stage, we can always come back to it when Mr Sterling reviews the whole of the report. This is a report, there are recommendations, and obviously we may not be able to get the whole thing accepted, but we should at least highlight it for people; make our choices, raise the issue as something to be further considered, and move on to the next section.

**Ms Swift:** The next section deals with section 15 and the right of a head to refuse to disclose a record if the record is soon to be published or is currently available elsewhere.

The issue is that section 15 does not require the head, when relying on this section, to inform the requester of the location of that information. It was suggested that without this statutory obligation, there may be a de facto denial of access.

There has been consideration of this by the Information and Privacy Commissioner, and the commissioner has suggested that this obligation is implicit in the legislation. In the 1991 report, the committee thought it would be a good idea to make this obligation explicit. My under-

standing was that the committee agreed with this last time and I drafted it in that way. The recommendation appears on page 41, with the words being added to the end of clause (a), "and the head has informed the requester of the specific location of the record or the information contained in the record."

**Mr Hope:** You've persuaded me.

1700

**Ms Swift:** Excellent. The next section is also a section 15 issue. Clause 15(b) allows the head to refuse to disclose a record if the head believes on reasonable grounds that the record will be published by the institution within 90 days of the request.

Section 15(b) is silent on what course of action is to be taken in the situation where the head has in good faith relied on this section but then, due to a change of circumstances, the information is not available within 90 days of the request. It's unclear from this section what happens next. Does the requester have to make another request? Can the institution continue to rely on this section, just extend the time?

The commissioner has suggested that this ought to be cleaned up, is I guess the best way to describe it, and suggested that a new provision be added which would require the head of the institution to give a requester written notice, in accordance with section 19, of the fact that the record will not be published as scheduled. This proposal would also not require the requester to make an additional request for the same record.

Virtually the same recommendation was adopted by the committee in its 1991 report, and the recommendation, as I understand it, the committee wished to adopt is set out at page 42.

**Mr Elston:** Is there a legitimate reason for a second delay actually occurring? I don't want to prevent somebody if it's a matter of publication or if it's a problem getting materials together or if something has fallen through. I know what we're trying to get at, but I don't want to put people in a position where they can't perform a task.

This is basically saying that it looks like they decided they're going to use 15(b) because 90 days was going to come up and then—at least the presentations were to the point—they decided not to, and as a result they cancelled the request.

**Ms Swift:** The proposal then requires the institution to inform the requester of that change and the nature of the change.

**Mr Elston:** We might as well go with this one. I'm just puzzled, because it makes the point that this is being used for some sort of nefarious reason, and that's my difficulty. I don't like to suggest that when we go through all this we see some kind of plot behind each issue which has been raised. Sometimes there are legitimate reasons. If it's just to advise them, "Listen, this isn't going to happen; what do you want us to do now?" I'm happy with it. But I don't want to leave this sense that we see a plot behind each problem. Sometimes there is a practical reason for some of this stuff.

**Ms Swift:** The next issue deals with draft documents.



It was suggested to the committee that draft versions of documents or records that have been published or that will be published should also be covered under this exemption. Basically, this was a recommendation from one witness who thought that reports that are made for committees, or papers that are prepared for institutions, go through several phases before they come to their final form and that these ought to be protected as well.

In dealing with this, I looked back at the Williams commission and at the rationale for the section 6 exemption that dealt with draft bylaws and draft bills, and the rationale there doesn't seem to apply to draft versions of documents. The rationale for the section 6 protection of draft bylaws and private bills was to protect the deliberations and decision-making processes.

In any event, there are two options for the committee to consider: that draft documents really don't fall within that rationale and so the committee does not support that recommendation; or that the committee agrees that draft versions of documents ought to be protected and that section 15 amended to effect that.

**Mr Elston:** Can I again ask the question about why the draft documents become important at all? The final product is what most people ought to be interested in; the evolution of the issue not so much. It's sort of like somebody takes the draft bylaw and considers it privately. If you're into municipal items, if you've got a bylaw that's being considered, you do the first reading and it's public. But if people are drafting things to try and get it refined or taking care of problems, why should we make people publish all of the versions of a bylaw that ultimately comes out in third reading, where it may have been amended in second reading or whatever? I just don't understand what it is that has to be done with these.

What is it, too, that is being dealt with when we have draft copies of reports, where people are thinking about them? Are we going to publish our draft document with our options in it? And the question is, why? Partly, this is an aide-mémoire as much as it is a report itself, and yet our final version of this material is going to be what will receive public scrutiny. They may very well ask several questions about our processes of arriving at the report. But why should we require more of somebody else than we require of ourselves?

**The Chair:** Maybe it has to do with the intent. Sometimes the bylaw that comes out in the end isn't what the intent in the draft originally set out to do.

**Mr Elston:** Yes, but the people who deal with the document—I'm thinking now more particularly of bylaws, obviously, and zoning changes or whatever. It's the final product and you can't go back someplace else and say, "Well, if they'd done it that way, my problem would have been solved."

The issue is, what does the final version of the document say? How do you interpret part of the sections that apply to create a problem? But it doesn't seem to me that you should force people to go through the publication of all kinds of draft documents. We would be inundated if that were, by right, required of every body covered by this.

**Ms Swift:** I don't think the issue is that they have to be published so much as they be available, that a person could access them. This is off the top of my head. It may be of historical interest to someone. I'm trying to reach for why they might want to do that, but it may be of historical interest or they may be able to argue a certain position based on a position that was held previously or something to advance—

**Mr Elston:** I think this is just providing a huge area of cost for individuals when you start talking about all the draft everything. I've worked in a law office in a small town and we would put together some suggested responses to problems from time to time for individuals, not intending to be implemented because you do them quickly. You say, "This is a general format," but that would be a draft document for the purposes of this, and people might say, "Well, no, we don't want that," and you rework it in the consultation. I presume I could declare a client-solicitor privilege under that circumstance, but it's a draft document. The publication of all of that material, it would seem to me, could really add up to some problems.

Just to move to another section that we haven't dealt with yet, if you want to get into a problem where there is a vexatious request being dealt with, which will be another part of our determinations here, that is an area where mischief really could be played, because the intention is not to do what—maybe the instructions were misunderstood or whatever, but somebody could say, "Give me all of your draft documents," and you could say, "I want to tell you right now, the exemption that we're claiming is that they'll all be published eventually," or whatever.

It just seems to me that nobody should be required to publish all that material and make it routinely available.

**Mr Wiseman:** I have two thoughts on this. The first one is that I would disagree with Mr Elston in that I would say that for probably 99.9% of the stuff that comes before councils and so on, you wouldn't want to see the draft documents; it would probably be laborious and really quite tedious to go through them. But what happens when something starts out and then at one point takes a complete 180-degree turn in terms of what has happened? How do you track a decision about something if you don't have some draft documents, if you can't at least ask to see them?

For example, if a land owner is given the understanding, either verbally or whatever, that his property is going to be allowed to go in a certain direction and then all of a sudden finds that the document that comes before council is 180 degrees the opposite, I think that if I was that person, I'd like to know what happened, I'd like to know when it happened, and I'd like to know why it happened. If I thought that maybe something was there that was "mischief," to use your phrase, I'd like to be able to find that out. So I would say that under that rare circumstance, maybe the draft document could be a stepping-stone to finding that out.

1710

But I would think that within the context of allowing draft documents to be viewed, anything that was of a



personal nature, libellous or whatever, and dealt with people—it wouldn't be too often—would not be included, that personal information would be excluded from that process. So I would tend to side with saying that draft documentation should be available on request, myself.

**The Chair:** If it's still around.

**Mr Wiseman:** Maybe that's just the cynic and the old dump-battler and protester in me who would like to chase this stuff down, but I think some of this draft information would be really interesting reading for groups in the community that would like to know how we got to a position without—

**Mr Elston:** I think, though, in your circumstance you're really talking about the Agenda for People. I know they want to know what happened there.

**Mr Wiseman:** No, we're talking about how you got to your position on same-sex.

**Mr Elston:** Most sorts of legitimately elected governments don't do that sort of thing, that's all.

**Mr Wiseman:** We're just wondering how your party got to its position of puffing and blowing on same-sex.

**The Chair:** You can go up in the House, Mr Wiseman, and join the discussions.

**Mr Sutherland:** If I could just ask for a clarification: I accept Mr Wiseman's point, but he also said that in 99% of the cases it wouldn't need to have it. So it would seem to me that if it's 99% of the cases, I can't justify necessarily having it available for that 1%, given—

*Interjection.*

**Mr Sutherland:** Well, I have trouble doing it.

What I want to know, and I'll have to plead my ignorance of the act on this situation, is it would seem to me that every report that goes through, say, a municipal council committee in effect is a draft report until it actually gets to the full council to make a final decision. Yes? Has the commission ruled on that? Until it passes full council, it's not really a final draft, in my view.

**Ms Swift:** Let me qualify my comments a little about this. Firstly, this suggestion doesn't deal only with reports that are going before a council; it deals with any reports, anywhere, in any institution, by anyone. It's that broad.

What you have under section 6 are only the draft versions of private bills or the draft bylaws. So those are the things that are protected now under section 6. Everything else would be accessible unless it's exempted under some other section, like advice and recommendations to the institution or some other exemption.

The other thing I would just say to the committee is that we didn't hear very much evidence about this and about the mischief it causes if the committee doesn't recommend an exemption for it. There was only one witness and, I have to tell you, it was a very, very small submission about what this might be.

It's up to the committee to decide about what it wants to do with that, but we don't have very much information or we didn't receive very much evidence about what the problem is.

**Mr Hope:** If I read your recommendation correctly—and correct me if I'm wrong, because it's your print and

it's left for interpretation—it says, "The committee agrees that draft versions of documents that have been published or that will be published within the time frame set out in the section should not be subject to disclosure." With something that has been published or is to be published, I don't see where the problem is.

Yes, we heard very little from a committee. I don't know what the whole issue is and I'm not going to get into municipal government and stuff like that. I'm looking at what you have recommended. We have one of two choices. The one choice is that we have no recommendation on this issue, or that we use a little bit of common sense and recommend option B, which talks about "draft versions of documents that have been published." If they're published, then why shouldn't somebody have access to them?

**Ms Swift:** The suggestion is that the thoughts that go into developing the final version may not be fully fleshed out or fully thought out. It might just be wrong until it gets to that final—

**Mr Hope:** Then make me understand what you mean by "draft versions." Why do you use the word "published"? I'm getting stuck on the word "published."

**Ms Swift:** The recommendation or the suggestion that came to the committee was that under section 15—section 15 deals with the situation where a document is going to be published; that is, made public in some formal way. Under that section, if you have a draft document that leads to a final document that is ultimately published, that it be protected from disclosure. It ought not to be available, because the thoughts are only fully fleshed out and fully made legitimate when it's in its final form.

**Mr Hope:** Help me to understand this word "published." I'm not trying to be cynical here. When preparing a piece of legislation, there is preliminary work that goes on. When you put it into the House, that becomes a published document, correct, at that time?

**Ms Swift:** I guess when it's printed and made available, it's published.

**Mr Hope:** Then by the time you get to royal assent, it's going to take its altered change. Which point are we dealing with? I'm asking for clarification. Are we dealing with the point before entry into the House, let's say for instance in our case, the information or the drafting that is going on before entry into the House, or entry into the House and the final product of a piece of legislation? This is what I'm trying to get clarification on.

I don't plan on being a municipal government expert—I hear in some of my rural communities about how expert they are about politics—I'm just trying to understand your word "published." To me, the documents that are being done up to create a piece of legislation are not published information yet. Once it's tabled in the House, then it becomes public, and yes, it will go through its change in process. Help me understand the word "published" that's being used here.

**Ms Swift:** Using your analogy, I would take it to mean the point where it is printed and available to the public.



**Mr Hope:** Which would be first reading of the bill.

**Mr Elston:** As in a manuscript, it is published, and upon publication, is available to the broad public. But a manuscript that is in that format is privately available for review. I think this would be the same thing. It is in the form, but it is not publicly available. "Publication," in my view, is making it publicly available. I think that's what they're talking about here.

**Mr Hope:** Because I lean to option B in my own opinion. I'm listening for opinions that help me understand the word "published."

**Ms Swift:** I'm not sure what to suggest at this point other than I can go back and try to find out if there has been some interpretation of "published" under section 15. Mr White may have some wisdom on this.

**Mr Hope:** Mr White, do you mind helping out on this?

**Mr White:** The purpose of that exemption is because typically you're supposed to answer a request in 30 days, and if an institution is going to publish or make publicly available that information, it gives them a further 60 days not to interfere with that process. It really is just a temporary period of time to allow the organization to make that information publicly available and not respond to an access request, but the notion is that it's going to be publicly available somewhere, be it published, printed and distributed or publicly available, let's say through Hansard. That's publicly available. It really removes responding to the request, because that's going to happen. "We're going to do it anyway, so you don't have to make a FOI request." That was the reason for it.

1720

**Mr Hope:** It's going to happen but it's going to take a little bit more time to happen.

**Mr White:** Right. You're going to get it, and we're planning on that. Give us the 90 days to do what we're doing anyway.

**Mr Hope:** Then I'd prefer option B.

**Mr White:** The proposal, though, is from, I guess, an organization that's saying that if we're going to do that, then what we would like is a new exemption. If we have any draft documentation, if you make a request for that, this is a new exemption saying that you don't get it; it's exempt now under the Municipal Freedom of Information and Protection of Privacy Act. Right now, it would be available if it's there, unless another exemption applied like personal information or if it was law enforcement, solicitor-client privilege.

**Mr Wiseman:** If we were to go with option B, what we would be doing is tightening it down.

**Mr White:** It's a new exemption you're creating. You're shutting down access to what would be publicly available now, subject to the other exemptions. You'd be creating a new exemption.

**Mr Wiseman:** Then I go with option A.

**Mr Elston:** But only temporarily.

**Mr Wiseman:** For good.

**Mr White:** From what I understand from your researcher, it's what is published; therefore, once it's

published or publicly available, if there's any draft material available in the institution, that is now exempt. If I ask for a draft of the internal auditor's report, it's publicly available.

**Mr Elston:** No. This basically says that any draft versions of documents that will be or have been published are exempt. Of course, once they're published they're available.

**Mr White:** Right. I think it's so, isn't it?

**Ms Swift:** The drafts wouldn't be available, though.

**Mr White:** Would not be available, right.

**Mr Wiseman:** But they're available now.

**Mr White:** They are available now, subject to any other exemptions. I don't have a copy of the report, so—

**Ms Swift:** The documents themselves are published but the drafts aren't.

**Mr Wiseman:** If we were to do this, what we're really doing is closing down what is available to the public now, and I don't support that.

**Ms Swift:** Do I understand we have consensus on A?

**Mr Hope:** No.

**Ms Swift:** No? Okay. I wasn't sure.

**Mr Hope:** I went back and re-read after some of the conversation.

**The Chair:** There are only 15 words there, Randy.

**Mr Hope:** Listen, I'm not a lawyer, so I want to grab all this in.

**The Chair:** Ask Murray; he'll tell you.

**Mr Elston:** I don't presuppose the ability to tell my friend from Chatham-Kent anything.

**Mrs MacKinnon:** Don't worry; we've tried it too.

**Mr Hope:** I guess I'm still having a hard time. Would it be possible to ask Mr White to come back up? How is this now taking away privileges that are currently in the act?

**Mr White:** Right now, say, you have report A that's published and it's in the—

**Mr Hope:** Everybody uses the word "publish," and when I hear the word "publish," I think it's public information.

**Mr White:** Publicly available; maybe that's a better way of putting it. It says "published or publicly available." "Published," I guess, means it's been printed and somehow available if you want to buy it or feel free to go somewhere and get it. Right now, if there's a draft available to that report, let's say you could make an FOI request for that draft, and you would get it unless an exemption applies. I believe the proposal—if you can verify this for me—is that whoever made the suggestion doesn't think that should be available, so they want to create a new exemption. If you ask for that report, all you have to say is, "No, this is a draft of a publicly available report; therefore, access is denied."

**Mr Hope:** Of a "publicly available," but it is a published report.

**Mr White:** But it's the draft, and somebody might want version 2 of eight because in version 2, as Mr

Wiseman said, something might have changed significantly and you can track what's happened.

**Mr Hope:** I guess my understanding is that they would still be able to access that because it's a published document.

**Mr White:** No, the final report's the published document.

**Mr Wiseman:** Unless you get the final report; all the other ones are closed. You don't get to see them any more. You can no longer go back and look at each stage of the report to see how you got to the final report and where it is that the point you were really concerned about was lost, whereas now, if you were to get all of the reports, you could go through them and you could compare them and see what was happening, and the whole process as it unfolded would be laid out to you in terms of the way the final decision was made.

**Mr Hope:** The recommendation says, "The committee agrees that draft versions of documents that have been published..." which I'm taking now is in a printed form.

**Ms Swift:** Maybe it's because of the wording I have here. Mr Elston had the same problem. What this is saying is that documents that are ultimately published, any versions, any drafts that preceded the final document that is published—

**Mr Hope:** That ain't what you have here.

**Ms Swift:** That's my fault. Basically what that says is that the published document, the document that is made available to the public, is accessible, but any other documents are not.

**Mr Hope:** I agree with option A, if that's the terminology you're using.

**Ms Swift:** All right. I apologize for causing so much confusion.

**Mr Hope:** When I read what you have here, it says I'm still entitled to all that.

**Mr Elston:** Under our current example, if we take this document, which is a draft, as soon as we do our report and it's tabled or reported from this committee to the House and is then published, this draft is then unavailable, exempted from any further publication.

**Ms Swift:** Yes.

**Mr Hope:** Okay. I would just leave it as the status quo and the recommendation would therefore be, "The committee agrees that the status quo prevail," instead of "no recommendation on the issue." It means the same, I guess.

**Ms Swift:** All right.

The next issue is section 16, dealing with the general override provision of compelling public interest. The exemption currently provides that, "An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption."

Two issues were raised with respect to this issue: firstly, that the test for the application of that section is too high, and the proof of that is that to date the section has never been successfully applied in any order. The

second issue is that the exemption doesn't apply to all the exemptions and it excludes, for example, section 6, draft bylaws; section 8, dealing with law enforcement; section 12, dealing with solicitor-client privilege; and section 38, the personal information exemption.

The commissioner proposed that the test for the application should be the same as appears in several other jurisdictions, notably British Columbia and Quebec; that is, that the test should be "when the disclosure is clearly in the public interest." In addition to increased public access, particularly where there is a compelling public interest, it was suggested that all the exemptions in the act should be made subject to the public interest override.

There are, as you would imagine, several options for the committee to consider: firstly, that the committee is persuaded that the test is simply too high to meet and that the public interest cannot be realized in this context, and that the committee also believes that the extension of the override provision should apply to all the exemptions in the act.

Option B is that the committee believes the exemptions are part of the fundamental balancing of interests and as such provide necessary protection to those interests and should not be overridden, except where the competing interest is so great as to outweigh the rationale for the exemption; in other words, the status quo of the act.

In that case, the committee again has two options: to recommend that there be no change to section 16, and secondly, that there be no change to the test under section 16 but that it be made to apply to all the exemptions in the act.

1730

**Mr Elston:** If I can just make two observations, the one that is particularly of concern to me is the law enforcement issue, which really sets up a very difficult balancing act. For instance, let's take a case which the member in the chair currently is well aware of in his area, where it appears that this freedom of information act might very well be used to force the commissioner to make a determination of "clearly in the public interest" while a court has ruled that no information be made available, or there could have been a request for an exemption by the police force.

I see that as causing a very difficult problem to arrive for the commissioner, for law enforcement officials who have a lot of work to do just to get to the bottom of a case and for the court system.

Secondly, the solicitor-client privilege section is one which is very tough to run with as well. You sort of say solicitor and client privilege is to be protected at all costs, except when it's clearly in the public interest, as determined by the freedom of information commissioner. I don't know that I'm prepared to allow that to occur. The discussions between solicitor and client and the types of activities there, it seems to me, have to be retained. That partly reflects my own former position as a solicitor and client. You get into discussions which are very, I don't know—

**Mr Hope:** Detailed.

**Mr Elston:** —detailed. If the solicitor then is going to



be required to release all the material that his client advised him or her, it seems to me to defeat the purpose of having confidentiality at all between solicitor and client.

"Clearly in the public interest," it seems to me, is not a very good test when you say, "Every solicitor and client privilege now may very well be open for public debate." Who are you going to confide in or who will you tell about certain parts of your matters? Those two areas, in my view, are extremely sensitive.

The personal information exemption: Again, you sort of ask yourself, if it's personal information, what is clearly in the public interest that would be seen otherwise to violate a person's right to privacy? I would like to know what the test would be, the test for "clearly in the public interest." It may be that the commissioner thinks it can be dealt with on each factual situation and I guess I'm prepared to allow that to occur, perhaps more under section 38 than I would be under the law enforcement and solicitor-client privilege issue. Those are two areas where we have to tread very, very carefully indeed.

**Mr Hope:** Looking at this, I raise a question of "compelling public interest." What's the definition of "compelling public interest"? In order to determine what to do and how to make stipulations on this, first of all, I believe that what you've got to have is a discussion about defining the words "compelling public interest." It's a real touchy one.

That being the case, I would look at the "either," "that no change be made to section 16," on page 45. The press tell you that everything is of public interest and you could get into that. We heard quite a bit of evidence that was brought before us about the right of the public to know. Sometimes it's important that the public doesn't know, and sometimes it's important they do know, and who makes that compelling public interest definition is a real difficult one.

With that, my conclusion would be that no changes be made to section 16, which you have written down on page 45 of the draft document that is now not public.

**Ms Swift:** That will be.

Are there any further comments about this particular section, these particular options for consideration?

**Mr Elston:** I am concerned about recommending, on sections 8 and 12, for sure. Maybe it would be better for us to express a concern that the test of the overriding public interest has never been met, but that we cannot recommend the degree to which changes should be made at this stage and that there are concerns particularly around law enforcement and solicitor-client relations.

That would certainly cover most of my concerns and it would let the people who see our report know that we dealt with it, at least briefly, and perhaps if others are interested, when they think about drafting amendments to this legislation, they might very well pursue that as an area to be addressed.

**Mr Hope:** Also, we have to come up with the definition of the words "compelling public interest."

**Ms Swift:** That wording exists in the act.

**Mr Hope:** Yes, but what does it mean?

**Ms Swift:** I see what you're saying.

**Mr Hope:** "Compelling public interest": 50 people, 100 people, small, minor? What is it? Where do we leave it? What I am saying is that before I can make a determination on that, there has to be some clarification of the definition of the word.

**Ms Swift:** I haven't turned my mind to this particular issue, but it may well have been the subject of interpretation by the commissioner under orders. I just haven't looked into that but I can, if you want, to see what they've used to define it or what it means. Although it's never been applied, I can look back at the orders and see at least what their thinking is about what it might mean.

**Mr Hope:** I'd like to know what the thinking is, especially when solicitor-client privilege is at issue, defending somebody; that's why lawyers earn those big bucks, isn't it, because of the—

**Ms Swift:** I wouldn't know.

**Mr Elston:** Neither would I.

**Mr Sutherland:** You've been in politics too long, right, Randy?

**Mr Hope:** As far as I know, everything is a disclosure in the life of a politician.

**Ms Swift:** Can I just summarize my understanding of where we are on this particular issue? My understanding is that we're going to red-flag the various issues that Mr Elston identified, that there seems to be perhaps some problem with the test as it is, but the committee is not prepared at this time to identify the degree to which it should move, and that there are specific concerns about any idea of changing and expanding the exemption to include the law enforcement or solicitor-client privilege, and also perhaps with respect to section 38, but that the committee is also concerned about what the definition of "compelling public interest" is and there is the concern about why that test has never been met, and I'll go back and look at what the interpretation has been so far.

Moving on to the next section, which deals with access procedure and abandoned requests. I have to admit that after I prepared for the meeting with the committee and I looked at this again, I thought perhaps this might be better placed under "frivolous and vexatious requests," rather than deal with it piecemeal as I've done here. It's up to the committee, but my suggestion would be that we just defer talking about that until we get to "frivolous and vexatious requests" and you could deal with the whole issue there.

**Mr Hope:** I move to defer that section.

**Mr Elston:** Agreed.

**Ms Swift:** The next issue then is section 17. This is a technical amendment and it arises because of different terminology in subsection 17(1) and subsection 17(2). Under subsection 17(1) the reference is to, "A person seeking access to a record shall make," and then it sets out the procedure, and then subsection (2) says, "If the request does not sufficiently describe the record sought, the institution shall inform the applicant." The feeling was that the terminology should be consistent.

**Mr Hope:** Agreed.



**Mr Elston:** I think that's fine. This is where somebody says, "I want the document talking about restaurants," and the people say, "Well, you haven't described the document that talks about restaurants enough, so we can't give you one."

**Ms Swift:** Yes.

**Mr Elston:** You've identified the "we'll provide." I think this is clearly a situation where we should help rectify that problem.

**Ms Swift:** The next section deals with transfer requests under section 18. This deals with the situation where the institution that originally receives the request transfers that request to another institution.

The problem that was raised before the committee was that in subsection 18(2), the "institution that receives a request for access to a record," where that institution does not have it in its custody, "the institution shall," that is, is required to, "make reasonable inquiries to determine whether another institution has" it, and "the head shall within fifteen days after the request is" made "forward the request...and give written notice to the person," the requester, of that fact.

Under subsection 18(3), "If an institution receives a request...and the head considers that another institution has a greater interest...the head may transfer the" document.

The issue is that under subsection 18(2) the requirement is mandatory and under 18(3) it's discretionary. It was felt that there was no apparent reason for that distinction and that both should be mandatory.

1740

The second issue concerns the timing of the notification of the requester. The committee will remember that one institution reported to the committee that it had received requests where the requester did not want any other institution to know about the request and did not want the transfer to be made and instead wanted to be notified before the transfer was actually made.

A related concern to that was that if the committee decides to do that, that is, to require notification of intention to transfer, the time period should be extended.

My understanding was that the committee was in favour of these recommendations, and the recommendations then have been set out at page 48, that is, that section 18(3) be amended to insert the word "shall" instead of "may" and that both sections 18(2) and 18(3) be amended to require prior written consent of the requester to transfer or forward the request to another institution and that the time period specified in the section be suspended pending receipt of the consent or the passage of a specified reasonable period of time.

**Mr Hope:** No problem.

**Mr Elston:** Agreed.

**Ms Swift:** The next issue is that in cases where refusal for access is made, there's a requirement that the institution notify the requester. The problem is that the sections that require that notification do not specifically require that the notice include a description of the record itself. It was felt, particularly by the commissioner, that

this omission places the requester and any other affected parties in a difficult position of having to decide whether or not to appeal the head's decision without having any knowledge of the nature of the record.

The Information and Privacy Commissioner has dealt with this under the provincial act and recognized an implicit requirement that there be a general description of the record. In its 1991 report, the committee recommended that this be made explicit.

**Mr Elston:** Does 17(2), as we've recommended the change, assist people in that way? I take it that this is another way when people just say: "Listen, we don't have a record that corresponds to your request. Therefore, we deny it." Section 17 would say then that they have an obligation to assist the person to clarify the record they were after, but this one basically says they have to set out a sketch at least of what record they do have.

**Ms Swift:** Yes, 17(2) says that if the requester hasn't sufficiently described it, we have to help them do that. The other sections dealing with notification of refusal say, "The record is there and we're refusing you access to it, but here's a general description of the record itself." In other words, it seems to me you've passed the threshold of 17(2) to get to these other sections.

**Mr Elston:** Okay.

**Ms Swift:** So the recommendation there is fine?

**Mr Hope:** I agree.

**Ms Swift:** The next issue is that although part I of the act establishes time limits for institutions to respond to requests, that is, that they have 30 days to respond to requests, there is no incentive in the act for institutions to adhere to the statutory time limits. Currently under the act, failure to respond within the 30 days, or a reasonable extension, only results in a deemed refusal by the institution, and that isn't a detriment to the institution either, because at that point, if the deemed refusal is appealed by the requester, the institution can still make representation to the commissioner. So the suggestion is that there are no negative consequences for an institution which fails to adhere to the time limits.

When the issue was raised in 1991, the committee concluded "that the lack of any incentive for an institution to comply with time limits is a serious deficiency in the act," and it has created delays.

Since then, the committee has heard from a number of institutions that staffing constraints, particularly in these financial times, have sometimes made compliance with the statutory time limits difficult. Some witnesses argued that the imposition of any kind of penalty on institutions that fail to comply strictly with the requirements would be very onerous and create additional workload for them.

A related concern, I guess, is that the reasons an institution has for extending the time limit are too restrictive and ought to be expanded to include time for research in the application of the act. It was suggested that delay often results now because of the increasing complexity of the statutory interpretations that have been given to the act and the need to research the commissioner's orders. This goes to some extent to explain why the statutory time limits haven't been met in all cases.



Looking back at the stats, it would appear that in the majority of cases the time limits are being met in any event. Indications for 1991 and 1992 are that in almost 91% of the cases requests are being met within 30 days.

I've taken from the committee discussion previously that the committee is concerned about the failure of an institution to respond to requests under the act and agrees with the commissioner that this subsection 22 should be amended to read that:

"Where a head fails to give notice required under section 19...the commissioner may, on appeal, require the head to waive payment of all or any part of an amount required to be paid by the person who made the request for access to the record."

In other words, the commissioner has the discretion to impose, in effect, some type of penalty on the institution in certain cases. It wouldn't be required, but it would be done on a case-by-case basis.

**Interjections:** Agreed.

**Mr Hope:** Agreed. Boy, isn't it amazing? When Norm's not here, we can really move through this process.

**Mr Elston:** We've already moved seven pages.

**Ms Swift:** We're really flipping along here. Next issue is alternate formatting: providing information in alternative formats other than print formats.

There are two issues here. The first issue was with respect to access for persons with low vision. The committee will remember that it was brought to its attention that no provision was made for ensuring effective access to government-held information by persons who are unable to use the information provided in the usual printed format.

The committee was also informed that Management Board Secretariat has responded to recent amendments to the Human Rights Code by issuing directives implementing a mandatory policy governing the provision of information for "print handicapped." Ministries and agencies are directed to make every reasonable effort to comply with the individual requests from print-handicapped persons for access to government institutions.

The issue has also been considered by the Information and Privacy Commissioner, and the commissioner ruled that although—the order actually concerned a person who is visually impaired—the act only required the institution to provide the information in an objectively comprehensible way, they must take reasonable steps to ensure the requester has effective access.

There's a postscript to that order—I don't know if you want me to get into it; it's set out on pages 52 and 53—essentially that the commissioner urge the government to deal with access to visually impaired persons to both their own personal information and to general records through amendments to the act.

Other jurisdictions already incorporate this type of provision. The federal Access to Information Act and Privacy Act have been amended to provide an obligation to consider that type of request and, if the record is available in an alternative format, must provide it forthwith and within a reasonable period of time. If the head

of the institution considers that it's necessary to enable the person to exercise their right of access and considers it reasonable to do so, they must do so.

The upshot of the discussion that I took from when we were receiving instructions on this was that the committee supports increased access through alternative formatting for low-vision and vision-impaired persons and the committee supports the inclusion of the principle that's already part of the Human Rights Code; that is, the principle of reasonable accommodation. The committee supports the inclusion of that principle in the act by making reasonable accommodation through alternative formatting to ensure greater access to government-held information by persons with sensory disabilities.

However, the committee is concerned about the cost implications of this proposal, particularly in a recessionary climate. The committee was urged by one witness to ensure that the fees levied for producing the record in alternative formats should never exceed the fees for providing the print alternative, even if the costs to the institution are greater.

The committee will remember that there were many submissions from institutions that spoke of the financial hardship the legislation currently imposes and urged the committee not to impose additional barriers by way of amendment to the act.

1750

Cognizant of the tension between the need to reform the act to ensure meaningful access and shrinking financial resources for institutions, the committee recommends that further consideration be given as to how the amendment can best be effected in light of these limitations.

The recommendation for the committee then is set out at page 54; that is, that the act be amended to provide increased access by persons who are print-handicapped through alternative formatting of general records and personal information and that further consideration be given to the cost implications and how it best can be implemented.

**Mr Hope:** Being as it's National Access Awareness Week and going off with some of the fine comments Mr Elston made in the House today, I would say that what we'd have to do, as an option for committee consideration, is ensure that the fees for access of information by an alternative format should never exceed the fee levied for a print format. I think what it creates is a balance, a fair playing ground. I believe that has to be, but I'm wondering if there's a way to incorporate that into your first part, that the act be amended to provide increased access by persons who are print-handicapped through alternative formats, format of general records and personal information.

On the second part of that, in the next sentence, you have, "Further consideration should be given to the cost implications of this amendment...." I'm saying, with the deletion of that part of it, "but to ensure that the fees for access of information," the second part, be inserted there.

**Ms Swift:** Delete the reference to "further consideration," about how to do this effectively, or with the "consideration of cost implications"?



**Mr Hope:** Yes. "Further consideration be given to the cost of implication of these amendments and how best they can be implemented in the cost-effective manner." I'm just saying that the cost-effective manner will be to those who know that the fee cannot exceed that of the printed version. It allows the institution the discretion to choose what is the best alternative way to deal with that. They know what their limits are. It does make it clear for the institution to understand what they could expect if revenues are needed or fees are charged. It gives them an idea and it gives the individual an idea that they're not going to be charged any more than the print format. I think it draws a balance. It makes a clear understanding for the institution of its limitations and it makes a clear understanding of the limitations for the persons with the disability.

**Mr Elston:** I think actually you've gotten on to two slightly different issues here. The issue of cost-effectiveness in relation to the formatting of the general record is different than making material available that has been requested. There really is a need to inspect or at least to figure out how institutions should put together their records to make it as accessible as possible in a cost-effective manner.

If somebody who has a problem with vision, for instance, Braille was suggested by one of the witnesses as being required. During the testimony, I think there was a minimum of \$1 a page, and you wouldn't necessarily want all of the records of a municipality to be converted into Braille. But there might be some other means by which the material could be readily converted into something of a format which would be fairly quickly available. I think we should further investigate that as an issue separate from the fact that there is a record being made available and that the charges are only going to be the cost of the print record that would have been made available otherwise.

From my standpoint, I'm quite happy to combine the two, but I don't want to see the elimination of a consideration of cost implications and, secondly, an intelligent discussion of what is the best, most worthy method of formatting your records to make them available in alternative formats.

**Mr Hope:** Just to respond to that, the question of whether it be Braille or audio would be—the individual still does not have that right to request an option preferred. It just says that we must try to suit the need of the person with the disability. The option of preference could be done audio, could be done Braille, but it does know that—what I was trying to do was get a balance for the individual who is requesting the information because they know that if there is a fee, the fee will be no more than what it would cost under print form and it does give the institution the understanding that the fee they're going to be dealing with is the fee to look at alternatives.

Why I say that and why I brought both of them together is it still does not give the individual, the requester of the information, the ability to determine what format that occurs in. Do you understand what I'm saying? You were using the terminology of Braille versus audio.

**Mr Elston:** I just think that you have confused the two issues. I think the issues are quite separate. The cost of an actual record going out: What we're saying is, there's a ceiling to what you can charge. But what we're talking about in the first part, the one that you want to eliminate, is making sure that there is some discovery of the best way to format, so that the institution can effectively and cost-efficiently have its records ready for an application or a request to come for access to them.

I think these are all compatible; I don't think it's an either/or. That's all I was saying, Randy, and I think they very well could be and very well ought to be combined, if you wish them in that format. But I think all three parts have to be included in our report, just to make sure that we have a concern about the formatting, that it be available to people with a difficulty in having records in the form that they are now kept, that we want to make sure the records are formatted in a better, more available, accessible fashion for people with a handicap, and finally, we want to have the most cost-effective manner of it being done.

I think, if you put all three parts in there, maybe rewrite them a wee bit to be compatible in the same paragraph, then I think we've got everything nailed down there and certainly are still expressing the need for an expansion of the accessibility.

**Mr Hope:** Okay. I would agree with that, that all three—the two recommendations, not all three but the two recommendations be—so it balances out the access of information, cost-effectiveness and the fee issue that was addressed by the disabled community on this issue.

**Mr Wiseman:** Are we hingeing on the edge here of giving municipalities and school boards and others another reason for not giving information by—

**Interjection:** No.

**Mr Wiseman:** Because I would not want to, by saying that the cost of doing this is too much.

**Mr Elston:** I think the first sentence basically says, "The act is to be amended to provide increased access," first; and then we go on down and just say, "Further consideration has to be given to how we can do it in the best and most cost-effective manner." And then finally, that, "If there is a cost associated beyond the cost of making a paper record available, then only the amount charged for the paper record will apply to the alternate format."

I think that's actually broadening it a fair bit.

**Mr Wiseman:** Okay.

**Mr Elston:** Because now I think what a municipality might very well do is say, "We can make it available to you in Braille or in audio, but the cost is the cost of the paper record plus 10%," or whatever. I think this really puts a much more definite view as to how we think the record should be made accessible. I think this is more helpful, at least in my view.

**The Chair:** It being 6 o'clock, this committee is adjourned until next Wednesday at 3:30.

The committee adjourned at 1758.











## CONTENTS

Wednesday 1 June 1994

<b>Town of Orangeville legislation</b> .....	M-325
<b>Draft report: Municipal Freedom of Information and Protection of Privacy Act</b> .....	M-327

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

- \***Chair / Président:** Hansen, Ron (Lincoln ND)
- \***Acting Chair / Président suppléant:** Hope, Randy R. (Chatham-Kent ND)
- Vice-Chair / Vice-Président:** Wessenger, Paul (Simcoe Centre ND)
- Dadamo, George (Windsor-Sandwich ND)
- Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)
- \*MacKinnon, Ellen (Lambton ND)
- \*Mathyssen, Irene (Middlesex ND)
- McClelland, Carman (Brampton North/-Nord L)
- \*Morin, Gilles E. (Carleton East/-Est L)
- \*Sterling, Norman W. (Carleton PC)
- Sullivan, Barbara (Halton Centre L)
- \*Sutherland, Kimble (Oxford ND)
- Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)

*\*In attendance / présents*

### **Also taking part / Autres participants et participantes:**

White, Frank, director, freedom of information and privacy branch, Management Board Secretariat

### **Substitutions present / Membres remplaçants présents:**

Elston, Murray J. (Bruce L) for Mrs Sullivan  
Hope, Randy R. (Chatham-Kent ND) for Mr Paul Johnson  
Wiseman, Jim (Durham West/-Ouest ND) for Mr Wessenger

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** Swift, Susan, research officer, Legislative Research Service





M-22

M-22

ISSN 1180-436X

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 8 June 1994

# Journal des débats (Hansard)

Mercredi 8 juin 1994

## Standing committee on the Legislative Assembly

Municipal Freedom of Information  
and Protection of Privacy Act

## Comité permanent de l'Assemblée législative

Loi sur l'accès à l'information  
municipale et la protection  
de la vie privée

Chair: Ron Hansen  
Clerk: Lisa Freedman



Président : Ron Hansen  
Greffière : Lisa Freedman

*50th anniversary*

**1944–1994**

*50<sup>e</sup> anniversaire*

### **Hansard is 50**

Hansard reporting of complete sessions of the Legislative Assembly of Ontario began on 23 February 1944 with the 21st Parliament. A commemorative display may be viewed on the main floor of the Legislative Building.

### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats a 50 ans**

Le reportage des sessions intégrales de l'Assemblée législative de l'Ontario, fait par le Journal des débats, a commencé le 23 février 1944 avec la 21<sup>e</sup> législature. Une exposition pour marquer cet événement est étalée au premier étage de l'Édifice du Parlement.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'Index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.





## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Wednesday 8 June 1994

Mercredi 8 juin 1994

The committee met at 1545 in room 151.

## DRAFT REPORT

MUNICIPAL FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY ACT

**The Vice-Chair (Mr Paul Wessenger):** I call the meeting to order. I'll ask leg counsel to bring us up to date on where we left off at the last meeting.

**Ms Susan Swift:** At the end of last week, we had finished up to the end of page 54, "Options for Committee Consideration" on that page, dealing with the issue of alternative formatting. The issue we should start with today is alternative formatting for general purposes.

The issue that's dealt with in this part of the report is that currently there's no obligation under the act to provide information in any format other than in print format. The suggestion was that, given the advances in electronic technology and the fact that for some requesters and in some instances these alternative formats would simply be less costly and more useful, such an obligation should be included in the act.

The committee will remember that other jurisdictions have recognized the advances in electronic information technology and have made amendments to their legislation to take advantage of these. Two provinces, Nova Scotia and Quebec, have legislation which allows for that kind of alternative formatting. The state of Connecticut perhaps has enacted the clearest statement on the issue of alternative formatting by imposing an obligation on institutions to provide access to public records in the form that is most appropriate to the requester. The provision in the state of Connecticut's legislation is at page 55. Essentially it says that the agency has an obligation to provide records in the most appropriate form to the requester, if the agency can reasonably make such a copy or have such a copy made.

Based on that, there are several options for the committee. They appear on pages 55 and 56. Essentially, the recommendation in option A is that the committee believes that while the issue of alternative formatting may not have figured prominently in the past, the use of computers and the advances in electronic technology have increased so dramatically that the issue will become increasingly important.

"The committee, therefore, recommends: that section 23 of the act be amended to provide an explicit obligation for the institution, whenever possible, to provide access in the form specified by the requester, unless it would be unreasonable to do so."

Option B is not an alternative option, but the commit-

tee may wish to consider that in its last recommendation about alternative formatting for persons with low vision, it was concerned about the cost implications of implementing such a policy and recommended that further consideration be given to how it could be implemented in the most cost-efficient and effective manner. That's what option B speaks to.

**Mr Randy R. Hope (Chatham-Kent):** I apologize for being late, but before we move on, I wanted to make two motions. The first is to allow Mr White to take the table. During this process we've been asking him to participate in this conversation and I'd like to put a motion that we allow Mr White to come forward. The other part of the motion, because this is supposedly a confidential document—I don't know if Mr White has a copy—is to provide Mr White a copy so it allows more constructive conversation and following along with the process.

**The Vice-Chair:** Is everybody agreed? Fine.

**Mr Hope:** Having done that, we support the recommendation on page 55. I don't believe option B would even be necessary to this process.

**Mr Norman W. Sterling (Carleton):** I don't know whether the words "in the form specified" connote the idea that the requester can say, "I want a table with this kind of information put in this kind of form," or does it mean a disc on a disc, a blueprint on a blueprint or whatever?

**Ms Swift:** The recommendation here really refers to your latter comments, that is, the form it's presented in, the disc or Braille or—

**Mr Sterling:** I just wondered if you could find other words than "form."

**Mr Bruce Crozier (Essex South):** "Medium"?

**Mr Sterling:** Yes, maybe something like "medium." Mr White, does the government make any money from the sale of information this way? I can recall getting something in the mail about somebody selling the telephone directory on a disc.

**Mr Jim Wiseman (Durham West):** That was private.

**Mr Sterling:** Yes, it was private, but I don't know whether the government is licensing that particular individual or that anybody can do the same thing. I don't know whether there's copyright associated, or are there any kinds of issues like that?

**Mr Frank White:** There's the Tradeable Data directive, a management board directive that guides the ministry or agency through the process if they want to

market data that is available under the freedom of information and privacy act, but I don't know in terms of revenue what the potential might be. I think there was an order paper question, actually, a few months ago about revenue from the sale of data.

**Mr Sterling:** Is there any requirement on the government to make public how it is storing the data; in other words, whether these data are on a disc or whether it's on paper or film or whatever?

**Mr Frank White:** I don't know of any obligation.

**Mr Wiseman:** I'd be hard pressed to think of anything that's been written lately that's not on a computer, some form of electronic storage, including architectural drawings, designs. It would all be on some form of electronic storage.

**Mr Sterling:** You're probably right. Okay, fine.

**The Vice-Chair:** It's been suggested that "in the form specified" be changed to "in the medium specified." Is that accepted?

**Mrs Ellen MacKinnon (Lambton):** Once this is in place, the requester is going to be obligated to ask for it in the format in which they want it. Am I correct?

**Ms Swift:** Unless they specify other than print. Normally they would be provided with a print copy, but if they have use for it in a disc format or something like that, they would ask for it in that way, and then this recommendation would say that they would receive it in that alternative format, the disc format. They would have to ask for it in a different format if they wanted it in other than print format.

**The Vice-Chair:** All in favour? Okay.

**Ms Swift:** On page 56, I take it the option B is not to be included, that that's dropped.

**The Vice-Chair:** Is that agreeable? Okay.

**Ms Swift:** Moving to the next section in the report dealing with "Protection of Personal Privacy" in part II under the act, there are several issues dealing with section 27 that were raised before the committee. The first deals with the designation of public records. Section 27 provides that "this part," that is, the part dealing with the protection of personal privacy, "does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public."

The first issue is that it is not clear in the act either who or how a record is designated as a public record. The committee heard that, in practice, records are designated as public records either by statute or by institutional policy. The commissioner was concerned that designations by policy rather than by statutory authority left too much discretion to the institution and made the recommendation that that should be changed so that public designations could be made only by statutory authority.

The arguments that were made against that proposal were that designating personal information as part of a public record either by statute or policy is currently a long-standing and well-established practice; also, that there are many policies currently that are outside the provincial government's jurisdiction such as the policies concerning criminal records; thirdly, that requiring

statutory authority for all such designations would mean amending many existing statutes and would inject rigidity into the practice.

So there are two options for the committee consideration: first, that the committee believes that the current operationally well-established practice of allowing public record designations by both statute and policy is preferable and therefore the committee does not support the proposal to change section 27; second, that the committee believes that a designation of personal information as a public record should be open to public scrutiny and input instead of being left to the discretion of the head; in other words, the section should be changed to allow designation of personal information, as a public record, to be made only by statutory authority. There are two options for the committee.

**Mr Sterling:** Is there any requirement for municipalities to print a list of what information lies in this area? It says, "This part does not apply to personal information that is maintained for the purpose of creating a record that is available." Is there a list of records that are available?

**Mr Frank White:** But I don't think they're designated that way, Mr Sterling. They are required to publish a listing of the records that the municipality maintains or the school board, but there's nothing on there that keys that this is a public record.

**Mr Sterling:** It would make more logical sense to build up a list that is available and that that list would evolve as time went on and decisions were made by the freedom of information and privacy commissioner. Then all municipalities would get an updated list from time to time about what records were available so there wouldn't be any questions, wouldn't be any appeals, and it would be much clearer to municipal clerks, particularly clerks of smaller municipalities, what the law was.

**Mr Frank White:** This is a very narrow section, because these are public records of personal information, which is a very odd situation; there are very few public records of personal information. For instance, the assessment roll would be a public record of personal information, but that would be public by statute also, not by policy.

**Mr Sterling:** It wouldn't be a very long list, then.

**Mr Wiseman:** There was an argument, though, presented by people who wanted to know what was on the assessment roll of their neighbour or the person around the corner, because, if I remember correctly, they were saying they couldn't find out what the assessment was of a house of the exact same nature unless they were to ask the owner. They wanted to do that because their assessment had gone up and their taxes had gone up and they wanted to know if everybody's had.

**Mr Sterling:** But that's clearly public information.

**Mr Frank White:** Yes, the assessment roll is a public record. Anybody can go down to their municipal clerk and have access to that assessment roll.

**Mr Sterling:** I would opt for option A. I don't think there's a great problem associated with the present way. It's operating.



**Mr Hope:** I guess here's where I disagree. I believe we ought to establish it very clearly. One of the problems I see that people might get into is that one institution that is not covered by statute might allow the information to flow, but that same institution, somewhere else, by the direction of its director, may decide not to. To establish continuity and consistency across this province in freedom of information dealing with personal information, I have a tendency to lean towards option B. I prefer option B, which is very specific in what it's trying to achieve.

1600

**Mr Sterling:** I don't care that much. I just think option B is more limiting than option A.

**The Vice-Chair:** This really applies to situations where there's not an obligation to provide information because it's available publicly. Is that correct?

**Ms Swift:** That's right. This deals with information that is collected for the purposes of maintaining a public record, so there isn't an access request through the act.

**The Vice-Chair:** So if I'm correct, option B would in effect require more exercise of discretion by the institution about whether it's releasable information or not.

**Mr Hope:** No. It's done by the statute, not by policy. One of the important things you're going into here is dealing with somebody's personal information and allowing the clear distinction.

**Mr Frank White:** What it's identifying, though, whichever way you do it, whether it's by statute only or by statute and policy, are those groups of records, like the assessment roll, where the privacy rules don't apply: You don't have to notify someone if their personal information was collected, there's no restriction on use or disclosure—anyone has access to it—there's no right of correction. That's what it's getting to in terms of a public record. It's just, how do you designate that public record? Do you do it only by a statute or are there other ways to do it; for instance, by the policy of the institution that a certain class of records would be a public record of personal information?

I can't give you a lot of examples. There just aren't a lot. In the provincial government, the only one I know of offhand that is not a public record by statute is part of the driver's licence file, but that is by policy.

**Mr Hope:** If we read what the commissioner said, he was concerned that the designation by policy rather than statutory authority leaves too much discretion with the institution. I think what he's trying to do is put consistency into place in the province, and I would agree.

An individual could go to one institution and its policy says, "Yes, allow it," and you could go to another one offering similar services and it says no. Then you create public havoc of people who want the information. When I read option B, it's very clear to me. It does set it out, and it takes away from the policy aspect and deals specifically with the statutory authorities.

**Mr Sterling:** My only concern is that I assume when we talk about statutory authority, we're talking about a provincial statute, probably by regulation. I believe a school board or a municipality or a hospital, if this is further expanded, has a better feeling for dealing with

these issues than we do, and I trust them to that degree, that if there were a huge problem the information commissioner would become involved one way or the other.

I just think it's overlegislating at the provincial level when you're dealing with another tier of governments that generally are going to be more protective than anything else. That's why I say I trust them to the degree of policy, unless the freedom of information commissioner can come in here and give us a solid example where somebody has done something to contravene somebody's privacy rights. I don't think he was suggesting he could give an example. It was just somebody who was studying this who came up with this recommendation, as far as I can see.

I don't care one way or the other. Let's have a vote on it, Mr Chairman, and get it done with.

**The Vice-Chair:** Okay. Those in favour of option A, indicate. Those in favour of option B, indicate. It seems to be more in favour of option B.

**Ms Swift:** The next issue was also brought forward by the Information and Privacy Commissioner with respect to section 27. His concern was that once information is designated as a personal record, that personal information is excluded from the privacy protections and can be used by anyone, an institution covered by the act or not, and this could lead to abuse of the personal information because institutions which are not covered by the act and are not specifically mandated to collect the information for use as a public record would not be as concerned with the accuracy or currency of the information as an organization that is mandated to do so.

The Information and Privacy Commissioner suggested that in order to limit the amount and type of personal information that we would designate as publicly available and to protect individuals from potential privacy invasions, the section 27 exclusion be narrowed and be available only to institutions that are specifically mandated to collect the personal information for purposes of maintaining a public record.

Again, two options for the committee's consideration: first, that the committee believes that such an amendment would strengthen the privacy protection provisions of the act and reduce the possibility of the abuse or misuse of such information and therefore recommends that section 27 be amended by adding the words "by an institution" in line 2 of the section. That is, the section would then read, "This part does not apply to personal information maintained by an institution for the purpose of creating a record that is available to the general public."

There wasn't very much discussion of option B, but essentially that the committee disagrees with that view and recommends that it not adopt the suggestion by the Information and Privacy Commissioner.

**Mr Hope:** My preference is option A, because option B says "will give reasons," and I don't know what reasons I could give. Option A again establishes some continuity in the system, and the commissioner would not bring forward simply to recommend change if there weren't problem areas he has seen through this process.

I think it's important from a public point of view. If



you're one who is part of the creation of a data bank, what is actually revealed to the public or what isn't—it just clears the person who is giving information, whether it be part of a statute or part of a regulation or whether it's just an institution collecting information.

**Mr Sterling:** I don't care.

**The Vice-Chair:** Okay, it's option A then.

**Ms Swift:** The third issue with respect to section 27 is that the public registers, such as assessment rolls and electoral lists, are excluded under part II. There is no privacy protection for public registers. The concern of the Information and Privacy Commissioner is that the use of such personal information is open to abuse by third parties who are not subject to the act.

The experience of New Zealand was cited as a way to balance the protection of personal information and public registers with the legitimate public right of access to such information, and the various principles that New Zealand has adopted in approaching this problem are set out at page 59. They deal with how these documents can be searched and whether they can be re-sorted or combined with information in other public registers, whether they can be made available by means of electronic transmission and the fees that can be charged for the information in such registers.

The argument that was presented to the committee against that was that extending all the privacy protection provisions to personal information, such as the right of notification, the right of correction etc, would mean that vast amounts of information that is currently considered public would be subject to all the provisions, all the protections—that is, collection, notification, use, disclosure, disposal procedures—set out under part II and that this would create tremendous operational demands on institutions and require a whole new level of bureaucracy to handle the added demands of complying with the privacy provisions.

1610

There are two options for the committee's consideration: first, that the committee is concerned with achieving the proper balance in providing the widest public access that is consistent with the protection of privacy. However, the cost implications of making such a change to section 27, particularly for such large amounts of information, concerned the committee and the committee therefore does not support the recommendation.

Option B: That the committee believes that public registers do contain sufficient significant personal information which, without the privacy protections, would be subject to abuse and misuse, and therefore recommends that part II of the act be amended to specify privacy protection provisions for public registers while ensuring that access to such registers is not denied.

**The Vice-Chair:** Do we have a consensus on A?

**Mr Hope:** No.

**Mr Sterling:** Be aware of what you're saying when you say B. You're going to increase your civil service by about 1,000 people.

**Mr Hope:** Explain to me how that says you're going to increase your public service by 1,000.

**Mr Sterling:** Every time you ask for a record associated with a piece of land in the land registry office, you're going to have to notify all the previous owners, as far as I can tell from this, or the present owners, when you search a title at the land registry office. In my view, all this information has been public for hundreds of years in Ontario and it's accepted as public information, although there are some privacy matters concerned, and that it continue to be part of the public record, like a phone book is.

**Mr Hope:** I'd ask Mr White, because I am leaning towards option B, simply because I look at the issue of abuse and misuse and I can see where that could occur. Everybody talks about increasing civil servants. With the technology base we have today, I don't agree with that. Information and data collection is important in its proper form. But I would ask Mr White. You deal with this more than we do and I'd just like your opinion on the recommendations that are being put forward.

**Mr Frank White:** This one's a little difficult because the concept of a public record is that everyone has equal access to it, so it's odd to say, "But we're going to have disclosure rules, we're going to have use rules." Those are the privacy protection measures that are embedded in part II, that you can only disclose it in certain circumstances, you can only use it in certain circumstances, and that seems to negate the idea of a public record. It seems difficult to have rules around what is supposedly something everyone has equal access to.

**Mr Hope:** I'm sorry for interrupting, Mr White, but this was just brought to my attention. Ms Swift, did you say "rights" or "registers"?

**Ms Swift:** It should be "registers." It says "rights," but it should be "registers."

**Mr Frank White:** The privacy rules imply that the restriction is on the use and disclosure of personal information. What we're dealing with here are public records of personal information, and the idea would be that everyone has equal access to that public record, so it's difficult to put use and disclosure rules in place, which is what part II of the act is.

I think what most people would get to is the notice of collection when it's a public record. If people who appeared before the committee expressed concerns, that probably would be—for instance, you don't have to give notice when you collect the personal information on how that information is going to be used, for what purpose. But again it's difficult to do that when it's going to be for a public record and anyone can obtain it. Mr Sterling's example of the registry offices, if you wanted to restrict—

**Mr Sterling:** I just think it's an impractical solution. How do you mail to everybody who's had a mortgage on a property when the addresses are 30 years old? Do you send out a whole bunch of mail that comes back to you? It doesn't make sense. If it's a public record, it's a public record. You make that policy decision, that everybody has a right to see who owned the property and who mortgaged the property and who has a lien on the property. We have the right to do that, and you don't have to notify the person who held that 20 years ago or



50 years ago or 100 years ago that you're now looking at that mortgage document or a copy of that mortgage document or that deed document. I just find it impractical in terms of implementing any kind of notification to these people.

**Mr Hope:** Just give me a second. I'm comparing some of the other stuff we just went over. Okay, I've got no problem with option A either.

**The Vice-Chair:** Okay, option A then.

**Ms Swift:** The next issue deals with the meaning of the term "collect." Many of the rights and obligations under part II hinge on this notion of collection of personal information, yet the term is not defined in the act. The Information and Privacy Commissioner suggested that the absence of such a definition has led to confusion and misinterpretation of the act. The committee, when it was giving instructions, indicated that it was in favour of the suggestion made by the commissioner, and that recommendation appears at the bottom of page 61, essentially that the term be defined for the purposes of part II and that the definitions provided should be as set out in that recommendation.

**Mr Hope:** You didn't give us any options?

**Ms Swift:** No, there weren't any options because the committee indicated that it accepted the recommendation that I should just draft the report to reflect that.

**The Vice-Chair:** Any comments? Agreed.

**Ms Swift:** Section 29 of the act regulates the manner in which personal information is to be collected, and clause 29(2)(a) requires that where personal information is collected by an institution, the head must inform the individual concerned of "the legal authority" for the collection.

The question raised with the committee was whether that requirement for indicating the legal authority was for the general legal authority or specific legal authority. It was suggested to the committee that it would be difficult for an individual to whom the information relates to challenge the authority or to make informed decisions regarding the collection unless they knew of the specific legal authority.

In its 1991 report the committee accepted the suggestion that "specific legal authority" be included in the act. In giving instructions, the committee also indicated that it supported the recommendation that section 29 be amended to indicate "specific legal authority," and that is contained on page 62.

**Mr Sterling:** Any problems with that at all?

**Mr Frank White:** What it does is, for instance, a municipality may state that the Municipal Act allows it to collect this personal information in its notice, and this would require it to go to a specific part of the Municipal Act and identify in particular where that authorization occurs.

A lot of acts that were in place before this legislation came in don't have that specific authority. They don't have a section that says, "You may collect personal information in order to determine"—I don't know—"the salary of the municipal clerk." It's implied in the operation of the act in terms of the responsibilities of a

municipality and what it's to do; that therefore it has to collect personal information to perform that function. So it does treat it a lot more narrowly.

**Mr Sterling:** I know that. I'm not against the idea here. I'm just saying, because there aren't specific sections which say, "You're entitled to this or that"—you produce a sort of generic section of an act which says that for the good purposes of the municipality, you can do whatever is necessary for administrative purposes, or something of that nature. If the layman gathers this and says, "Well, this doesn't give you any authority," then you're into a huge fight. I have no objections to it if it could be done. Municipal Affairs might have something to say about it, I don't know.

1620

**Mr Hope:** I would agree. I think the general public needs to know specifically what the information is for, and if in municipalities they'd have a bit of a problem with it, I guess we'd better clean the legislation up to make sure that if data is needed on whatever person for a municipality to properly function, it should be clear to the general public who have to provide the information. I agree with the recommendation.

**The Vice-Chair:** I guess that's a consensus in favour of this one.

**Ms Swift:** The next issue deals with the collection of health card numbers by school boards. The committee will remember that many school boards questioned whether they had the authority to collect student health card numbers. Reference was made to subsection 28(2), that the collection of personal information on behalf of an institution is prohibited "unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity."

School boards questioned whether this section was sufficient authority to allow them to collect the numbers. It was pointed out that the school board requires such numbers to ensure that students will receive prompt, appropriate medical attention. Several school boards cited contradictory legal opinions from the Ministry of Health as to whether the authority exists under that section of the act. The result of those contradictory opinions has been that there has been confusion.

The committee, giving instructions the last time around, indicated that it supported the notion that the act should be clarified to set out the authority of schools to collect health card numbers. Therefore, it recommended that the appropriate amendment be made, either to the Municipal Freedom of Information and Protection of Privacy Act or the Education Act, to ensure that the authority of schools to collect and maintain student health card numbers be clearly set out.

**Mr Hope:** Would there be any other areas where a student or a participant in a program would also fall under this jurisdiction? I agree with the recommendation. I'm just wondering if the recommendation shouldn't incorporate other areas youth or students might participate in, that there wouldn't be other areas where personal information such as a health card number—you're dealing



with emergency situations. For an adult, it's not a problem; most of the time they carry their own health card in their pocket. But for youth it becomes a whole different story.

**The Vice-Chair:** It could be municipal recreation programs or private, like the Y programs. That's an interesting question. Would there be any restriction on the Y or the municipal recreation departments collecting health card numbers for their programs?

**Mr Frank White:** The use of the health card, though, is controlled by the Health Cards and Numbers Control Act. Really, if there's a problem in terms of collecting that information, I think it's that act you would look to, because the municipal act would say you can collect it where another statute authorizes it. If the health card control act prevents you from collecting it, that would be the place that it's not meeting. I think it's that you can collect it for a health purpose, something like that, in terms of the health card control act.

**The Vice-Chair:** So the recommendation is inaccurate, and it should be that the appropriate amendment should be made to the applicable act.

**Mr Frank White:** Probably the Health Cards and Numbers Control Act.

**The Vice-Chair:** Okay, could we change that?

**Mr Hope:** Schools brought this out, that what we need to do is clear it up. I look at other programs that ask people for their health care number for emergency situations, whether it be in minor sports or others, and they make a request of that number on an application. Isn't that the same as what the school boards are saying, that they have in their possession the health care numbers of students?

**Mr Sterling:** I think there's a difference. In one case, I had a parent whose child was involved in either a scout movement or the guide movement, and the scout master wanted the health card numbers, I guess in case there was some injury. For some reason, he was quite concerned that this scout master was making this a condition of joining his particular troop or whatever. That's a voluntary organization, and in my view, we don't have to legislate that. You as a parent make your own decision. If you want your child enrolled in that and the scout master, who's a full-time volunteer or whatever, is requiring that in order to fulfil his or her duties, that's fine and dandy.

In the school situation, kids have to go to school, and therefore there's an obligation for them to be there. So that's where you can get into the hassle where the parent says, "No, you're not going to have the health card number," for whatever reason. I'm not certain of all the reasons they might not want them, but some people object to giving these numbers out. That's where I think you have to say to a school, that has the obligation to educate the child, that you have the right to the health card number.

**Mr Crozier:** Just as an observation, though, it says here, "The numbers are required by the school boards to ensure that in cases of medical emergency" etc. I rather doubt that if there's a medical emergency and the ambu-

lance is called, anybody asks for a health card number before they treat you. Granted, it helps once you get there and you go through the process.

It seems to be rather a moot point. If the board of education feels it needs it and it would help things, that's fine, but, as Mr Sterling says, when you get into these other areas, I'm not so sure it speeds things up as far as the care is concerned.

**Mr Hope:** Murray, what's your opinion? Both you and Norm were the ministers at one time.

**Mr Murray J. Elston (Bruce):** To be quite honest, I think the problem the school boards were talking about were ones where you take a travelling team or you were on a tour of a place quite far away from home. It's great to have in the files someplace a health card number so you can do all the administrative stuff and get all that out of the way if there is an accident. I think in many ways, people are looking for an ability to complete their obligations as the guardian or chaperon or coach or whatever. I have no problem with that.

To the same extent, if I were a scout leader or someone involved with even a voluntary organization, I can see where people say, "It's a mistake for you to go anyplace with these children without having in your possession the necessary medical information to take care of your charges."

So I'm ambivalent—no, I shouldn't say I'm ambivalent. I'm sure we should allow that access of information in the institutional end of things but I'm torn in terms of how far you go with making it available in the voluntary. I don't think it's right that somebody should have to choose, necessarily, to enrol a child because of this or that, but I guess the final determination can be made by that person. I certainly think in the education system they should be able to hand it over. I don't see anything wrong with that.

I think the danger people look at with the number is, "Maybe they'll access my whole record." Do you know something? The prospect of that happening in the school circumstance—I played football at one point. I broke my leg. I had to be taken to the hospital. I got treated, and I don't think there was a real invasion of my privacy in that situation, nor would there have been had they had my own personal number, which is what we're going to now. In those days, it was family numbers. I don't think there's any violation that's as possible as I think we make it up to be in those circumstances.

1630

**Mrs MacKinnon:** I'm very sympathetic to what the members have put across here, and I sympathize with people who take cubs and scouts and guides and hockey players and ball players and that out of town and so on. But in this day and age of the communications ability we've got, I really question, in this province at any rate, that a doctor or a hospital or anybody else involved in health care would refuse the care just because the card wasn't there.

Sooner or later the parents are going to be contacted, the card number is going to become available, and I wonder if we're not just asking a little too much of the



various volunteers who work in these types of things that I just mentioned. As I said, in the communications that we have nowadays, my goodness, it's just a matter of moments and you can have the information there.

I'm thinking, of course, back when my children were smaller, and even at that time I don't think they were required to have a health card. I think they went in under either their dad's or mine or something, I think that's the way it was, whereas I guess now they're all individual. I can see a bit of a problem trying to entrust such a thing as a health card to what we call the little mini-mites in hockey; you know, to take care of it, go in the dressing room and look after it on a bus and all the rest of it.

I just have a little bit of a problem, because we know what the fraud system is like when it comes to the health cards. You know, some little one inadvertently loses it—and all of us as parents know how children can lose things. I just wonder if maybe we're overlooking the fact that it can be communicated fairly quickly.

**Mr Hope:** My question is what you were getting at, and as far as the recommendation, I have no problem with the recommendation. I guess where I was drawing the question at is the broader aspect as we talk about dealing with our youth. For instance, in hockey schools they write on the application form, "What's the OHIP number?" Now you're leaving it to discretion. I'm just wondering if we're not creating problems by not allowing others where there might be potential injury of our youth.

I'm just looking at it from a youth point of view. We would hope that no one would ever ask for a health card before actually providing services, but as we lead to the technology, there might be important information accompanying that number, personal information which is vital and important to the wellbeing of the youth.

With the recommendation I have no problem. I'm just wondering if we shouldn't look in the broader context. They're talking about a new card now and everything. There could be valuable information on there that could be very important to the wellbeing of the youth. I just raise that. It's not an issue now, and if it does become one, then we can deal with it when we talk about the new health care cards. But I think it has to be brought to the awareness of individuals that, yes, okay, we'll allow the schools to have it. If we're talking about a new card system which does have very specific information on a youth, yes, you may not have that number and the process may follow itself later, but you might need that information in order to provide surgery or whatever, and that's what I'm getting at. It's the information contained with the number that might be important to the youth's wellbeing. I just want to flag it for people. The recommendation is fine, but there's another area that I think we have to focus on and it is what is contained with that number in providing for the wellbeing of the youth.

**The Vice-Chair:** I think there's fair consensus in support of the recommendation. It also seems, if I might try to summarize here, that maybe they would like to look to see if there are other areas it should be extended to. I don't know whether you can do something general on that aspect of other areas where you have custodians in institutional settings.

**Mr Hope:** It's maybe not necessarily in this act that we need to address it, but I think it has to be flagged when we start talking about health care cards and new numbers and the information contained on it about the rollout that we need to make sure takes in—the adults are fine. Adults should be carrying the thing on them. It should be in their wallet. There is a responsibility of the adult. You don't have yours, Murray, but to a youth it becomes a whole different story. I just think that information sometimes becomes very important.

**Ms Swift:** I was just going to say, if I could just summarize so I have it clear in my mind that there's consensus about this recommendation and that the committee wants me to red-flag the broader aspect or the broader application in other institutional settings, possibly also mentioning voluntary organizations, and the issue you've raised, that is, in the future, if there's information on health cards, consideration should be given to how that would become part of this recommendation. But I wouldn't come forward with options for recommendations. In other words, I'd just include it in part of the discussion leading up to this recommendation.

**Mr Hope:** Which could then be brought to the Ministry of Health when they introduce the card. They might need some legislative changes or some regulative changes in their process which then allow the organizations to make sure that the wellbeing of individuals is taken into account.

**Ms Swift:** The next issue deals with the obligation to maintain security of the personal information. It was pointed out to the committee that, although there's provision in the act for the Lieutenant Governor in Council to make regulations setting standards for and requiring administrative, technical and physical safeguards to ensure the security and confidentiality of records and personal information under the control of institutions, there is no specific legal duty on the part of institutions to ensure the security of personal information in their custody and under their control.

It was suggested that this issue is of sufficient importance that this obligation ought to be made explicit in the act. In its 1991 report the committee adopted this recommendation. My understanding is that the committee wishes to accept this recommendation, or it did at least when it was giving me instructions, the rationale being that the committee believes that the continuing advances in electronic information technology and its increased use by individuals, businesses and governments make these concerns of security even more pressing today.

The committee therefore recommends that section 30 be amended to add:

"An institution shall ensure that personal information in its custody or under its control is protected by such security safeguards as are reasonable in the circumstances to prevent loss or unauthorized access, use, modification or disclosure."

**Mr Hope:** I would agree.

**The Vice-Chair:** Okay. All agreed. Next?

**Ms Swift:** The next issue is with respect to the disposal, use and disclosure provisions under part II.



First, it was brought to the committee's attention that there's inconsistent wording in some of these provisions.

First, subsection 30(4) deals with the disposal of personal information "under the control of the institution." It was noted that this wording is inconsistent with other provisions in part II which refer to personal information "in the custody or under the control of the institution."

It was suggested that the section be amended to accord with the other wording in part II, so that it would read:

"30(4) A head shall dispose of personal information in the custody or under the control of the institution in accordance with the regulations."

**The Vice-Chair:** Is that agreed? Agreed. Next?

**Ms Swift:** The second instance in which there's inconsistent wording is in sections 31 and 32 of the act, governing use and disclosure.

**Mr Sterling:** Agreed.

**The Vice-Chair:** Agreed.

**Mr Hope:** Who said "Agreed"?

**The Vice-Chair:** Norm.

**Mr Hope:** Okay. I'll agree to that.

**Ms Swift:** The next issue is under clause 32(a), which permits an institution to disclose personal information in its custody or under its control "in accordance with part I" of the act. It was suggested that this section is unclear as to whether disclosure is permissible only in the context of a request made under part I or whether or not there could be unilateral disclosure by an institution.

It was pointed out that currently municipalities are relying on this section to provide unilateral disclosure of personal information and then looking to section 14 to ensure that they aren't making an unjustified invasion of personal privacy.

Recently an order of the Information and Privacy Commissioner ruled that clause 32(a) applies only in the context of a request for information. The committee instructed that a provision be drafted to say "that section 32(a) be amended to clarify that the section applies only in the context of a request for access to personal information." It would thereby incorporate the IPC's order into the act.

1640

**Mr Hope:** No problem.

**The Vice-Chair:** Okay. Mr Sterling?

**Mr Sterling:** There's a statement here that says the municipalities are relying on, I guess, the ambiguity of the section to release personal information unilaterally. Can you recall what they were talking about there, what kind of information?

**Ms Swift:** I don't think an example was given of that, Mr Sterling. The submission that was prepared for the committee didn't cite any examples, but this came forward from the Information and Privacy Commissioner.

**Mr Sterling:** You see, I don't know what problems we're creating for the municipality by saying this.

**Mr Frank White:** I know the situation they're characterizing, but I don't have an example for you.

There's a section that deals with personal information that cannot be disclosed, for instance, a person's medical history, which would be subsection 14(3). There are other types of personal information where it could be an unjustified invasion of your privacy to disclose it, but because of the factors that are listed, for instance, the institution should be subject to public scrutiny, you can override that and disclose the information anyway. Even though it would be an unjustified invasion, you'd override that presumption.

In the absence of a request the person whose personal information it is wouldn't get a chance to make representations on that to give their side of the story. So what you would do is go through this without the representations of the individual the personal information relates to and come to the conclusion that even though it is personal information that could be, by releasing it, an invasion of privacy, there are matters that would mitigate against that and release it anyway.

I think what the commissioner is saying in his representations, and his orders actually now, is that you can't do that; that this only applies, you can only bring that to bear when it's a request under the act. You can only go through this balancing; you can't do it on your own in the absence of the requester.

Therefore, unless disclosing information falls within the circumstances of section 32, for instance, if the individual's consent is authorized by statute, there's nothing else that applies. You can't go through this balancing as you would with a request in order to come to the conclusion that you can release that personal information.

**Mr Sterling:** Let's say somebody has a dog which has bitten three children, and there's no request for the municipality to disclose that information. There was a story in the Ottawa Citizen recently where a dog had bitten three children previously and then the fourth time it bit another child and severely wounded the child. There was a concern in the community that they hadn't been warned about this.

Now, first of all, I don't know if that's the kind of personal information we're talking about here, but I would imagine the kind of information we're talking about is when somebody has something or in some way could harm the community and it would be a decision made in the public good to divulge some personal information. Is that a fair example?

**Mr Frank White:** You can release it under the section we're dealing with right now, section 32, if it's compelling circumstances, affects the health or safety of an individual.

**Mr Sterling:** Without a request? You can do that anyway?

**Mr Frank White:** Yes, under section 32.

**The Vice-Chair:** Do we have any objection to this one then? No? Okay.

**Ms Swift:** The next issue is the application of the consistent purpose in section 33 and its applicability to sections 31(b) and 32(c).

These sections permit the use and disclosure of per-



sonal information for the purpose for which it was obtained or compiled or for a "consistent purpose." Section 33 provides that where personal information has been collected directly from the individual, the purpose of a use or disclosure is a "consistent purpose only if the individual might reasonably expect such use or disclosure." The constraint on the use of personal information in section 33 does not apply if the information has been collected indirectly, and it was also suggested that the "reasonable expectation" test in section 33 is vague and liable to broad interpretation.

The committee suggested that there is no reason why the "consistent purpose" rule should apply only where information is collected directly, but should also apply to situations where information is collected indirectly. Also, the committee indicated that it supported the notion that the "consistent purpose" test should be further clarified with an introduction of a more objective standard.

The recommendation would be:

"That section 33 be amended by deleting the reference to directly collected information and instead providing that the purpose of a use or disclosure of personal information is a consistent purpose...only if the purpose has a reasonable and direct connection to the original purpose."

**Mr Hope:** Sorry, Susan, what did you read from?

**Ms Swift:** That was page 67 and to the top of 68. The recommendation is on page 68.

**The Vice-Chair:** So basically it brings under information that's indirectly collected?

**Ms Swift:** Yes.

**Mr Wiseman:** I was just wondering about this with respect to the disclosure of personal information of welfare cases. This would not change in any way information? Maybe I'm a little bit confused about the comment that it would be reasonable to allow the information to be used if it was in direct relation to the context of the information being collected. In other words, if a regional councillor or a local councillor wanted to know what was on the welfare rolls, would they be able to ask, if we make this recommendation and this change, and be reasonably expected to get the information?

**Mr Hope:** That comes later on.

**Ms Swift:** We deal more directly with the issue of the access of elected officials to information about the social assistance rolls after this section, and that's dealt with also in clause 32(d). The consistent purpose has to refer to the collection of the information itself, so you'd have to look at the reason why it was collected initially and then look at whether or not the person would reasonably have expected that the information would then be used in some other way. The question would be whether they would reasonably expect that the information would then be disclosed to the elected officials.

**Mr Frank White:** The other option is, when there's indirect collection, how do you infer what a person would reasonably have expected, because you're not collecting it from them when you're indirectly collecting the personal information?

The test right now for using and disclosing it for a consistent purpose is that the individual might reasonably have expected such a use or disclosure at the time of collection, but you're collecting indirectly. They didn't even know at the time of collection it was being collected. You give notice later, so how do you infer what they would reasonably expect when they don't even know what's happening at the point of collection?

What this is suggesting is that the test be changed to one that has a direct connection to the purpose for which it's collected. If you're collecting information, I don't know, to be hired, then you'd expect it to be disclosed and used by the payroll department to be paid. I guess it might be interpreted as a direct connection to the original purpose of collecting personal information when someone's employed, as opposed to trying to infer what the reasonable expectation was.

**Mr Sterling:** How do you deal with this in terms of quasi-offence kinds of dealings like bylaw infractions?

**Mr Frank White:** If it falls under law enforcement, you don't have to give notice.

**Mr Sterling:** Even for a bylaw officer planning—

**Mr Frank White:** That would be enforcement of a statute or a bylaw, which would fall under the law enforcement.

1650

**Mr Sterling:** So there's no problem there then.

**Mr Frank White:** That's right.

**Mr Sterling:** And then employmentwise, how would you deal with that?

**Mr Frank White:** You would be giving notice at the time of hiring.

**Mr Sterling:** Yes, but what if somebody came to me and said, "I'm a reference on the employee's"—the applicant isn't, hence they say, "I'm a reference," and the person phones me up and says, "Norm, is this person a good person or a bad person?" and I say, imprudently, that they're a bad person.

**Mr Wiseman:** Do you reasonably expect that to be divulged to the person?

**Mr Sterling:** That's right.

**Mr Frank White:** Actually, there's a section, section 39, where information which is collected for the purposes of a reference, where it's provided in confidence, you can refuse to disclose that if it would reveal the name of the person who provided it in confidence for evaluative or opinion material.

**Mr Sterling:** And it's bound to be covered then.

**Mr Wiseman:** So that's the choice.

**Mr Frank White:** If you can anonymize it, it could be disclosed: your reference to you. If it was provided in confidence and you can't anonymize the comment by removing your name, then it won't be disclosed.

**Mr Wiseman:** Then he would have to say to the person, "Do you want this to be disclosed or not?"

**Mr Frank White:** Typically, yes. When you ask for references you say, "Is this confidential or is this provided in confidence?" You put it on your summary that

these references are being provided in confidence in an employment context.

**Mr Sterling:** When you talk about personal information, you're talking about a file on the person here. You've collected this information from them, so you have a file sitting over here. When you're talking about indirectly collected information, that may not be on that file at all, it may be in some generic document that includes 50 or 100 names. If you're going to print that document, do you have to notify all of these people?

**Mr Frank White:** No, the notice is to the person whose personal information is being collected, so if you're, let's say, applying for a benefit program at the time you make that application, on the bottom of the application there should be a notice saying how that personal information is going to be used to disclose—

**Mr Sterling:** No, I understand the directly collected, I'm saying the indirectly collected.

**Mr Frank White:** Then there's a notice required in most circumstances to that person after that collection.

**Mr Sterling:** You're saying this doesn't really fit into the language of the act as it presently is structured.

**Mr Frank White:** Right now it's a problem because it talks about only direct collection—it doesn't even speak about indirect—and infers that you can use and disclose personal information for a consistent purpose, and that's defined as one that you could reasonably expect. Yet how do you determine what a person would reasonably expect when you're not collecting information directly from them? That's the technical problem.

The proposal—I don't know who made it; was it the commission?—would try to equate the reasonable expectation to an analogous use rather than what a person might expect.

**Mr Sterling:** I don't know how practical it is, that's the problem. That's the bottom line for me in terms of whether this is a practical thing to do or not. Is it going to be unduly onerous on the municipalities and expensive to do?

Indirectly collected information is not supplied by me, so that I've lost the power over that information anyway. Somebody else has that information. In a lot of ways it's public information at that stage of the game. I don't feel strongly on this one myself. Until I know the implications of how it would come down on the municipalities, I'm reluctant to support the recommendation.

**Mr Hope:** I support the recommendation and I don't see the problem. We could all picture what happens. I think, in taking where the recommendation is coming from with respect to the commissioner, trying to come up with a balance, one who has dealt with it, one who has not participated in it—Norm has a little bit more experience than I do in this process, but I weigh a lot of respect to the commissioner. He's making a recommendation which I believe is responding.

I would agree with the recommendation that's in the report and move its closure. I guess if we agree to disagree, then let's just call a vote on it.

**Mr Wiseman:** I just wanted my point clarified. I don't want to drag it out. It's getting grey enough.

**The Vice-Chair:** All in favour then?

**Mr Hope:** Of what, the recommendation?

**The Vice-Chair:** Yes, the recommendation. Opposed? Okay. I guess it's carried.

**Ms Swift:** The next issue is under clause 32(d):

"An institution shall not disclose personal information in its custody or under its control except:

"(d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions."

It was brought to the committee's attention that that subsection does not explicitly provide for the disclosure of personal information to persons outside the institution but who have been retained by the institution to do work for them, such as legal counsel, consultants, auditors, translators and others.

The commissioner proposed that such a right be extended but that it be extended subject to the same conditions that currently apply to disclosure to officials or employees of the institution; and to ensure that this is the case, the act should require institutions to enter into contractual agreements with consultants etc, similar to the research agreements referred to in clause 14(1)(e) prior to such information being disclosed.

**Mr Hope:** I would agree with that process. I believe that we have to have some continuity outside if contract employees of specialities are coming in. To put an agreement in place would only provide the protection of individuals and of an organization.

**The Vice-Chair:** Any other comments? I assume we have consensus on this one then? Okay, next.

**Ms Swift:** A number of the school boards that appeared before the committee made suggestions that there are particular problems with the application of the privacy protection provisions of the act to the operation of schools and school boards. It was noted that the interrelationship of the act with other education-related statutes has been a source of particular concern to these school boards that did appear before the committee.

It was suggested by the school boards that they have unique privacy needs which would be better addressed in the context of the education system under the Education Act itself, instead of under MFIPPA, in the context of a general application to a whole range of functionally unrelated institutions.

The examples that the school boards gave are referred to at pages 69 and 70: firstly, that there are statutes that require, for example, the Ontario Teachers' Federation to collect membership fees based on the salary of each teacher, and that their experience has been that some school boards have been reluctant to report the actual salaries of their teachers because a person's salary is considered personal information, the disclosure of which is presumed to constitute an unjustified invasion of personal privacy under section 14.

Another conflict between this act and the education-related statutes: Again under the Teaching Profession Act, the federation is required to conduct inquiries and hold



hearings in cases of alleged professional misconduct, and school boards have been reluctant to provide evidence relating to such disciplinary matters on the same basis, that such information would constitute an unjustified invasion of personal privacy.

It was noted that clause 32(e) clearly authorizes the disclosure of personal information for the purpose of complying with an act of the Legislature or an act of the Parliament. Despite this section, however, it was noted that there continues to be confusion. A related concern was the application of the act to labour relations in the context of the education-related statutes.

1700

It was also noted that school activities such as publishing the school yearbook, taking class photos, having local media cover school sporting events and displaying students' essays have ceased to be everyday occurrences due to the privacy protection provisions, and school boards expressed frustration with the formality and rigidity that they suggest the privacy provisions of the act have injected into these activities.

It was suggested that the act already makes provision for these types of activities in sections 31(b) and 32(c), both of which allow the institution to use or disclose personal information if it is used or disclosed for the purpose for which it was compiled or for some other consistent purpose. The school boards maintain, however, that the collection of personal information is so removed from its subsequent use throughout the year in these various activities that the reasonable expectations of parents would not apply.

The conclusion that the committee appeared to come to when it was giving instructions was that from all the evidence, the committee notes that there continues to be this widespread uncertainty and unease with the application of the act to schools and school boards.

There are several options there for the committee consideration, principally that the committee is very concerned about the apparent pervasiveness of the frustration and confusion and believes that this frustration is due in large measure to insufficient education about the specific application of the act to the school system and recommends that the Management Board secretariat specifically target and direct public education and awareness programs to the education sector with a view to addressing the concerns expressed in this report regarding the application of the privacy provisions of the act and the interrelationship with other education-related statutes.

Option B: The committee believes that the pervasiveness of the frustration bears further investigation and that the Management Board should undertake a review of the unique privacy needs of the education sector with a view to making recommendations as to how these needs could be more appropriately met within the act or, if necessary, outside of the act.

Those two options appear at the bottom of page 71 and the top of page 72.

**Mr Crozier:** Sounds fair to me.

**The Vice-Chair:** Which one?

**Mr Crozier:** Both. They're both being recommended,

are they not? It's not an either/or.

**Ms Swift:** These aren't recommendations. These are just starting points for discussion for the committee's purposes. They can choose either of those or modify those or use them as a starting point to come up with some other recommendation.

**Mr Hope:** It's beyond me why the information that is established in a collective agreement is not transmitted from a collective agreement of a school board to teachers dealing with the collection of dues. It's beyond me why that is even a problem. When they were bringing that up, how are you supposed to verify information if they're not providing the information? I started to question whether it was just an issue of the lack of information or if we really need to be more specific with schools on this issue. When you deal with school activities, I believe we heard something where even with shooting a video you needed consent of the students to shoot a video yearbook.

**The Vice-Chair:** That sounds ridiculous.

**Mr Hope:** It was getting too extreme, and you wonder if it wasn't just communication that was a problem.

**Mr Wiseman:** We heard that the privacy commissioner said that it wasn't an infringement of privacy, that they could shoot the video. I think that was the ruling.

**Mr Hope:** Mr White, may I ask your opinion on this?

**Mr Frank White:** I think a lot of the problems were with the initial interpretation. I'm not aware that there are major problems still, but I could be wrong. You did have the federation in to say that these are some problems they're experiencing. I don't know, for instance, where they said some boards were reluctant to report actual salaries of teachers, whether that's one board or one out of a couple of hundred. I just don't know what the magnitude of the problem is.

**Mr Hope:** Their salaries will now be revealed—right?—or potentially. In the recommendation we talked about salaries. Would that include those school boards, teachers?

**Ms Swift:** Yes, if they met the threshold.

**Mr Wiseman:** The threshold is \$30,000.

**Mr Frank White:** Under the social contract?

**Ms Swift:** I've forgotten. I think it was \$50,000.

**Mr Hope:** Fifty and benefits?

**Mr Wiseman:** Fifty with benefits.

**Ms Swift:** Yes.

**Mr Wiseman:** That would get just about every fourth- or fifth-year teacher and up.

**Ms Swift:** The problem is the compliance with the teachers' federation act, because they base the membership fees on the actual salaries of each of the teachers.

**Mr Frank White:** I don't know if the statute provides vehicles for disclosing it. You can disclose it under an agreement. So, for instance, our collective agreement with OPSEU allows us to disclose a tape each month of dues that have been paid by payroll to the unions. I think all the vehicles are there; it's just a question of, does a board want to accept that vehicle or is there something else

that's interfering with that? I just don't know generally if there is. I don't know why a board would come forward to say, "No, we can't disclose it under the privacy side."

The researcher could perhaps call the teachers' federation to find out if there's a specific example.

**Mr Wiseman:** I'd go with option B.

**The Vice-Chair:** Option B. Irene, have you decided which option?

**Mrs Irene Mathysen (Middlesex):** No, I'm listening.

**Mr Hope:** If I was to pick an option, I would say B. It seems like we are getting into a whole broader context of the school boards and maybe people going overboard with the freedom of information and protection of privacy when it's just general information it should be part of. It seems like they're using it and they're carrying it in their coat pockets to say: "Well, it's in the act here. We can't do this." I have no problem with B.

**The Vice-Chair:** Okay. For B that's three, four.

**Mr Crozier:** I still thought that really they address two different problems, that you could with A inform the boards and give them a better understanding of the act. Then I also thought that the Management Board Secretariat may, at the same time or subsequently, want to review the unique privacy needs of the school boards, but in the meantime inform them that there are things they can do without too much—so that's why I looked at both of them as being—

**The Vice-Chair:** I think it's fair to say they are not contradictory.

**Mr Crozier:** No.

**Mr Hope:** With that, I would then agree with Mr Crozier just to incorporate it as part of the whole recommendation. I have no problem putting it as one part.

**Mr Wiseman:** Pull them together.

**The Vice-Chair:** Yes, because there is a lack of knowledge out there and we want to see what the problems are. Okay. Next.

**Ms Swift:** The next issue is the issue of social assistance recipients. Remember that the committee was urged by a number of witnesses to recommend changes to the act to ensure that the identity of social assistance recipients is not disclosed to elected officials.

I don't know if the committee wants me to go through all of the discussion.

**Mr Hope:** Don't go through the whole thing, unless Mr Crozier wishes to.

**Mr Crozier:** No.

**Mr Hope:** Unless you just want to go over the options for the record which is supposed to be confidential, but go ahead for the record.

**Ms Swift:** The first option is, "The committee reaffirms its concern about the need to recognize the particular sensitivity of social assistance information and its belief that the recommendations previously made in its 1991 report should be implemented to ensure that information regarding welfare recipients is not subject to misuse."

There were four recommendations made in the 1991 report, recommendations 39 to 42. Does the committee want me to summarize those briefly?

**Mr Hope:** If you wouldn't mind, for those who haven't read 39 to 42. I think it's appropriate so you give them a general idea.

**Ms Swift:** Recommendation 39 was that the act be amended to require an institution to consider prior to implementation all reasonable alternatives to a proposed use or disclosure of personal information without the consent of the individuals concerned and to implement the method which will have the least intrusive effect on personal privacy. In addition, the act should require institutions to demonstrate that they have considered, prior to implementation, all reasonable alternatives to a proposed use or disclosure of personal information.

Secondly, that the act be amended to require the Information and Privacy Commissioner when dealing with a complaint to investigate the legitimacy of an institution's proposed use or disclosure of personal information without the consent of the individuals involved.

1710

Recommendation 41 was that subsection 2(1) of the Municipal Freedom of Information and Protection of Privacy Act be amended to define the department of social services of a municipality which has appointed a welfare administrator as a separate institution under the act, distinct from the municipal corporation itself; and finally, that the provincial and municipal acts be amended to designate those classes of employees who have a need to know information about the recipients of social assistance.

So the first option for committee consideration is simply that they reaffirm those recommendations and recommend that they be adopted under the municipal act.

Option B: The committee believes that the principle of public accountability requires that local elected officials have access to personal information where it is appropriate in accordance with the protections afforded under section 32(d). Therefore, the committee recommends that the act should be amended to clarify that "officer" under that section, when referring to a member or members of a municipal council, means the head of the council, the council acting as a whole, the head of the municipal corporation for purposes of the act, whether it is the head of the council or an individual councillor, a committee of the council or a council as a whole or a member of a municipal council who is executing the duties of an officer of the assembly. Access by municipal councillors to personal information should be restricted to disclosure of information which is necessary and proper to the performance of the councillor's duties as an officer of the municipality. Essentially, that provision gives a definition of what an officer is, which does not currently exist in the act.

Option C is not strictly an alternative option, but the possibility is that the committee might recommend that it would add "that in the case of personal information regarding social assistance, the act should specify the



class of persons who have 'a need to know,'" that is, add on to option B specific reference to persons who have a need to know information about social assistance.

**Mr Wiseman:** My preference is option A.

**Mr Hope:** After I heard the member from Thunder Bay come forward, I have no other choice but to go for option A.

**The Vice-Chair:** Yes. Mr Crozier? Option A?

**Mr Crozier:** I don't know enough about it to give a comment, so I'll go along with you, sure. Nobody else is here to object.

**Mr Hope:** Just basically three reasons. With respect to Mr Crozier, one of the issues was we were getting into arguments about the administration of social services. Some communities still would hand-write cheques and everybody sees who's who and then the privacy of individuals is not protected. The recommendations that were done in another report clearly define things and try to get the mess that is currently in the system straightened out. Municipal councils—Lambton county, which is very close—are saying they're entitled to it. It just clears up where the information has to go and where it should go. Option A, just supporting those recommendations, helps put things in order.

**Mr Crozier:** And it goes on the side of protecting the privacy, is that right?

**The Vice-Chair:** Yes.

**Mr Hope:** If you need it for statistical information, it can be obtained, but the person's name becomes a little different story.

**Mr Wiseman:** It comes out of a presentation we had where an allegation of huge amounts of fraud were being made and the council wanted to go after people who were on welfare to make sure there wasn't any fraud. There are a number of problems with that, because, first, I don't think anybody on the council would be as familiar with the rules on the acquisition of welfare as the people who have been trained to do the job; second, my understanding of the way this system works is that there are an awful lot of checks and balances to make sure supervisors and case workers and everybody are doing their job. If it was opened up to people who are not trained and not skilful, I think a lot of people could be hurt unnecessarily in a pursuit of, I don't know, imagined or real fraud.

**Mr Crozier:** Or vindictiveness.

**Mr Wiseman:** And there is some possibility of that.

**Mr Crozier:** I understand what you're saying.

**Mrs Mathysen:** I'd just like to add to the record, in further comment to Mr Wiseman's assertion, that in one of the counties in question there was an officer hired to investigate complaints. Apparently, of the 200 complaints that were launched in regard to welfare fraud, only 10 were found to have some basis in fact. Of those 10, two were prosecuted. So I think Mr Wiseman's point about it being overblown is certainly important and needs to be repeated often.

**Ms Swift:** Mr Chair, before we go on to the next issue, there's a paragraph that I want to have the committee's instructions on. It appears at the bottom of page 76.

The committee will remember that Mr Elston, during the course of the hearings, raised the question of the difference in treatment between publishing or making public the salaries of elected officials while keeping secret the information regarding social assistance recipients. He asked a number of witnesses about why we should be doing one or the other.

At the bottom of page 76, I have taken from the committee discussion a response to that. I've included that and I just wanted the committee to direct its attention to that and advise me whether or not it accepts that rationale. It's basically:

"The committee believes that the social stigma attached to receiving public assistance, the potential for improper use of this information and the profound implications of such misuse justifies the difference in treatment of information regarding social assistance and public servant salaries."

**Mr Wiseman:** It's all under \$50,000 a year anyway, so it shouldn't be disclosed.

**Mrs Mathysen:** To say the least.

**Mr Wiseman:** It's under \$30,000 a year.

**Ms Swift:** So that's fine?

**Mr Wiseman:** That's fine.

**Ms Swift:** There are two other related issues that we have here to social assistance. The first is welfare administration in unconsolidated regions. The committee will remember that several witnesses suggested that the potential for improper use of social assistance information is much greater in unconsolidated municipalities, where typically there is no full-time welfare administrator and municipal politicians are directly involved in delivery of services. This was the point that Mr Hope was making.

There are two options there for the committee then to consider whether it wants to make a comment on this. First, option A:

"The committee believes that the welfare program delivery practices of unconsolidated municipalities should be scrutinized more carefully, particularly in light of the concerns the committee has already expressed in relation to the need to recognize the particular sensitivity of social assistance information."

It therefore recommends:

"That the Information and Privacy Commissioner should immediately engage in a comprehensive audit of the practices of welfare delivery in unconsolidated municipalities to determine whether all possible steps are taken to ensure confidentiality."

Option B:

"The committee has received insufficient evidence to make an assessment of the nature or extent of any abuse...in unconsolidated regions. The committee therefore is unable to make any recommendation at this time on this issue."

**Mr Hope:** If I may, I would prefer option A and having the Information and Privacy Commissioner examine this. His role and responsibility is to deal with the balance of public information and the privacy of individuals.

We had heard, and we can only imagine from our experiences—especially Mr Crozier and myself and Irene from small communities, we know how talk generates through small communities. I would be very concerned about if appropriate steps are being taken.

That's why I would prefer option A, to allow the commissioner to do a comprehensive audit of the practices of welfare delivery in those communities that are affected. I don't believe we're talking about a whole lot of communities. I believe there might be only two or three in the province, and I'm only guessing, that would need this audit done.

**Mr Crozier:** Does the committee agree that there are only two or three? Is that how limited that would be? I wanted to ask to what extent or what was meant by "a comprehensive audit." Who would do it? What would it involve? What are they going to do with the results of it?

**Mr Hope:** I'm trying to remember the aspect of it. Is it not in Renfrew county that we heard the presentation around general welfare administration? Then I went back and asked why is this and how many communities do it. I believe the answer was "two or three" but I could be mistaken because I'm going back to when this took place. Mr White, do you have any recognition?

**Mr Frank White:** No.

1720

**Mr Hope:** Okay. But it's not a whole lot of communities. Most of them are either done provincially or the municipalities, like in our communities, are sophisticated enough with technology.

**The Vice-Chair:** Probably we should coincide with the act and replace the words "comprehensive audit" with "an investigation" so it gives us the power to investigate in the act. I'd just suggest that we comply with what the act says.

**Mr Hope:** What's that again?

**The Vice-Chair:** That we change the words "comprehensive audit" to "an investigation" because in the act the privacy commissioner is given the power to investigate, not to do an audit.

**Mr Hope:** Whatever. My view is to get them in there and look at making sure that the privacy of information of individuals is protected, that proper protocol is being followed, and if changes need to be made, then so be it.

**Mr Crozier:** Essentially what would happen is the commissioner would go in; if the rules are being followed, then that's fine. If the rules are not followed, they'd instruct them as to what to do and away they go.

**The Vice-Chair:** Yes.

**Mr Crozier:** Understood.

**The Vice-Chair:** Okay. That's approved then.

**Mr Hope:** Before we move on too much further and before I forget, because we do have to move to the House for a vote later on, and I want to make sure I get this on the record, a motion I wish to move is that the committee be authorized to name a subcommittee consisting of one member of each party to meet at a mutually agreed-upon time to continue writing the draft of this committee's final report as well as three committee members, staff

from Management Board, freedom of information branch and one staff per member of the subcommittee to be invited. Upon completion of the draft, the report shall be returned to the committee of the Legislative Assembly for passage.

If I may speak on the motion, through this whole process of conversation trying to get to some type of a report, we still have a number of pages and we would probably like to get done very soon so that if there are changes that need to be done in the act we could get moving on it. What this will allow, and I am of the belief, and I may ask the clerk, that this is agreed upon by all so far, or do we have agreement by all? I want to be fair. Mr Sterling just walked in. I'm making a motion that we bring one person from each of the parties to form a subcommittee and get this report finalized and brought back to this committee for a vote and try to establish—

**Mr Sterling:** As long as the subcommittee's binding on the committee, I don't mind.

**Mr Hope:** What's that? That's why I asked the question first; I'm outnumbered. I think it would just help expedite the process to get this report written back to this committee for its final examination and approval, and hopefully get it back before the House so that more comprehensive work can be done and our tour of duty completed and moving on to our next phase, which is all those other institutions we wish to bring forward under the Freedom of Information and Protection of Privacy Act.

I move that as a formal motion and I do have it written down.

**Mr Wiseman:** I'm just wondering if we could make sure, on behalf of Mr Crozier, that it's been discussed with the House leader of the Liberals. I understand it's been discussed among the House leaders of the other parties.

**Mr Crozier:** Do you leave me in charge? I make decisions. I have no problem.

**Mr Sterling:** We haven't discussed that. It doesn't matter. All it will be is a recommendation of the committee, so that at that point in time, if there are any fights left over, they'll take place here.

**The Vice-Chair:** Carried, then.

**Mr Wiseman:** I understand that's the way you were as mayor too. Get things done.

**Mr Crozier:** I don't know who told you that.

**Mr Wiseman:** My relatives.

**The Vice-Chair:** That should be referred to subcommittee now. Do you want a motion to refer this?

**Mr Hope:** No. According to my motion, it doesn't have to be to the subcommittee. It's one person from each to form a subcommittee, not necessarily the subcommittee.

**The Vice-Chair:** But do we have to do that today?

**Mr Hope:** No, you don't need to. One from each. It's very clear in the motion.

**The Vice-Chair:** We should arrange for a subcommittee meeting then? You'll arrange it? Then I can adjourn the meeting.



**Mr Hope:** No, I want to table this. We still have a few minutes left of the day here. I just wanted to get it on and voted on.

**The Vice-Chair:** So you want to proceed then to cut down the amount we're doing in the subcommittee. Okay, that's fair enough.

**Ms Swift:** The next issue, on page 79, is a corollary to the whole issue of what we've been discussing on social assistance. A more general suggestion was made to the committee involving the whole treatment of personal information under the act, in the context of determining initial and continuing eligibility for social assistance and the investigation of welfare fraud.

You remember that one municipality argued that although elected officials should not have access to the identity of welfare recipients, personal information relevant to determining the initial and continuing eligibility should be more widely and routinely accessible to welfare administrators. Several suggestions were made as to how that might be done, including blanket consent forms and computer matching-up to ensure that there wasn't double-dipping. Legal clinics responded to the suggestion, emphasizing particularly that blanket authorizations would pave the way to improper use of personal information about welfare recipients.

My understanding of the committee's instructions led me to present two options, two possibilities: Option A, that the committee rejects any suggestion that there should be suspension of privacy rights of persons receiving social assistance, and the sensitivity of social assistance information and the significant implications of its misuse require the implementation of the recommendations already made by the committee, in other words, the committee rejects the suggestions made; option B, that in addition, the committee believes that a consent to disclose signed as a condition of application for social assistance should not relieve institutions of the obligation to consider all reasonable alternatives to the disclosure of the identity of the applicant or the recipient.

Those two options appear at the bottom of page 80 and the top of page 81.

**Mr Hope:** If I may ask Mr White a question on this one, is there a difference between provincial and municipal right now? We're hearing from the municipal side of things. Provincially, around the information itself, is there a difference between the two?

**Mr Frank White:** In how the information would be treated?

**Mr Hope:** Yes.

**Mr Frank White:** The statutory provisions are the same in both statutes. All this came up because of Hastings county and the motion by the council to have access to the names of social assistance recipients. I think in that particular case the court decision was that they didn't have a need to know that information so they shouldn't have access to it. A number of groups are still concerned that councils, even though we have that court decision, can still pass bylaws to require the welfare administrator to provide that information to the municipal councillors, so there are a number of measures that are

being suggested to prevent that.

**Mr Hope:** But if we're putting forward option A on page 77, which deals with recommendations 39 to 42, would we even need this part of the recommendations dealing with this? The beginning we straightened out the problem, which will not lead to a problem later on. Once we clearly defined who is entitled to the information under the four recommendations, that would clearly then look at these two options that are being put forward.

**Ms Swift:** Perhaps I can clarify and this might put it a little bit more into context. You'll remember that there was one municipality, Thunder Bay, that came forward and said: "We're not so interested in the fact that elected officials should have access to this. In fact, we agree they should not have access. But we think that the act should be restructured to allow for greater disclosure and easier disclosure where you're dealing with eligibility for welfare assistance."

In other words, the act should be adapted in some way to allow for greater access to personal information for those purposes only, so that once you get past who needs to know, the question here is more, what can they know and how can they know it? The suggestion was that when you're talking about welfare and eligibility and continuing eligibility, there should be greater access.

1730

**Mr Hope:** If that's the case and that's the content we're using, there's currently the program that is going on with the ministry now, dealing with case file review officers; if that is the case in accessing information, neither one of these options then would be considered. What I would say is that the current investigation review officers who are put in place will eliminate some of the problems on eligibility and stuff.

The other areas they were talking about I don't believe are through freedom of information and protection of privacy. I believe that is an issue with a different ministry under the social assistance issue, the GWA and FBA, that has to be cleared up in that area versus freedom of information and protection of privacy.

With that I would make a comment, about eligibility and that, that there is a program in place to deal with the eligibility criteria and to deal with the investigation of fraud. We've cleaned up some of it in our first option, A, and I would just pull both options right out of it.

**Mr Frank White:** I think that what the researcher is presenting is the case at the top of page 80 that Thunder Bay made, that there should be greater access to social assistance information.

**Mr Hope:** Then if it's just the one issue, I'd pull it right out of the report. I wouldn't even give it any recognition in the report. It's being dealt with and it falls, not under the freedom of information and protection of privacy; it falls under the social assistance, the GWA and FBA. It does not fall under the freedom of information and protection of privacy.

As far as that is concerned, if we're taking the one case in hand, I would pull that whole section right out of there, right from the middle of page 79. That's my view. I move that we pull, starting with the middle of page 79

and including page 80 and half of page 81, right out of the report.

**Mr Frank White:** Because?

**Mr Hope:** It's being dealt with and it falls under a different jurisdiction of an act.

**Mr Frank White:** The records would be under the custody of the municipality, in terms of the municipal freedom of information act.

**Mr Hope:** Which we then cleared up in option A, where we put the four recommendations.

**Mr Frank White:** No. Actually, the recommendation was that the welfare administration would be treated as a separate institution, so it would still be covered by the act, but it would be municipality A and municipality B welfare administration. They'd function as separate units for purposes of the statute and they'd be responsible for their own privacy decisions.

**The Vice-Chair:** Could I perhaps make a clarification here. I understand that if this is deleted, Mr Hope, it leaves the status quo, which means there's no restriction on the trading of information with respect to blanket authorizations. Is that correct?

**Ms Swift:** This section really says that there should be even more access and that—

**The Vice-Chair:** It says there more access.

**Ms Swift:** There should be more access, that's right, and easier access when you're dealing with the specific issue of social assistance, and to confirm your eligibility and ongoing eligibility. You'll remember it was suggested that certain privacy rights should be suspended where the public purse is paying for these things. That's what the issue is directed at.

**Mr Hope:** I hear what you're saying, Sue, but under option A on page 77 we're now clearing up the issue about who's entitled to what information, the investigation process. All that is being cleared up in option A on page 77 with those recommendations that have been put forward.

The issue that Thunder Bay was bringing forward falls more into the investigation eligibility criteria and falls into the jurisdiction of different acts, which is the FBA and the GWA. So I'm saying, as far as us dealing with the freedom of information and protection of privacy is concerned, with this one particular issue, it does not need to be addressed in this report, and I would move that it be pulled out.

**Mr Wiseman:** I'm just wondering about this section here where it says "the receipt of payments from more than one source of public funds." Perhaps somebody could enlighten me at this point as to what exchange of information takes place, for example, between unemployment insurance and welfare, how it's done and whether it's done.

I wouldn't want to exclude from the act the ability of a trained person to look at a case and find out whether they're accessing unemployment insurance, welfare and other things. This also has to do with how much information is transferred between the federal and the provincial level and whether or not the case workers are able to do

that. Then it gets back to Randy's question about whether it should be done under this act or whether it should be done under a different act, in order to make it possible for that simple question to be asked about what other sources of government funding you are receiving, and be able to check maybe against the social insurance number or something. Beyond that, I don't think any other information would be necessary except for the name, the address and the number.

**Ms Swift:** If I could comment, my recollection of the evidence that was presented to the committee was that the requirement of having to sign so many consents for the various ministries that might be involved in levels of government was cumbersome and onerous. The witness presented a sheaf of documents illustrating the breadth of paperwork that would be involved in having to do this kind of thing, to obtain all the consents and proceed with it.

What this was speaking to, and the suggestion that was made to the committee, was that the burden be eased in some way by allowing for this special treatment under the act for social assistance.

**Mr Hope:** The burden has been relieved through an implemented program. It could be even further relieved if we had one service delivery process, which is going to take a little bit of time, but that's a political argument that's down the road.

I'm just saying that to address the issue on the investigation and case file review, we clearly identified that in option A on page 77. This issue here is around the further process of information. The forms are now changed and there are new processes being put in place under the review of files to find out if they're eligible for other programs, and also the application process is changed, and there is provincial and federal agreement to put in place where sharing of information has been established on this issue.

**Ms Swift:** Maybe I can make a suggestion. It seems to me that there are two possibilities based on the discussion. One is that we pull this whole discussion completely from the report; or second, leave the discussion in, but instead of these options, further discussion about what is being done currently, so therefore it's not necessary to proceed with some kind of blanket change to the act.

**Mr Hope:** I'd pull it right out of the report.

**Mr Sterling:** I wasn't here when 77 was voted on, but as I understand it, what you're doing is basically denying the elected officials any access to the personal records by setting up separate sections here, as you describe them, Mr White. The head of the welfare "department" will be accountable to himself and no one else? How does municipal council seek accountability? How do they know there is accountability in terms of the welfare department? Here the elected people were elected to oversee the expenditures, yet you're saying you're going to deny them information.

1740

**Ms Swift:** Under the recommendation that the committee has accepted, the social services department would



be designated as the head of the institution. So they would be a separate institution.

**Mr Sterling:** Then how does the accountability go from separate institution A to the one that's elected by the people?

**Mr Hope:** They don't need to. The institution doesn't need to deal with the individual. Now the designator, which is in the recommendations, page 77, talks about the head of the social assistance being the person entitled to the information. The only thing that the overall municipality is responsible for is the total dollar figure, not the individuals' names and who's on social assistance. There's where the accountability aspect comes in.

**Mr Sterling:** What if there's an allegation of impropriety or non-accountability or whatever and the municipal council—

**Mr Hope:** It's referred to the investigation officers who are there with social assistance.

**Mr Sterling:** No. If you think they're running this department shoddily, how do you determine whether they are or they're not? This guy can tell you to go fish.

**Mr Hope:** No. He still has to be accountable to you. It's just the freedom of information dealing with the individual. You still have your normal protocol of general information that's there corporately, but on an individual basis you wouldn't be entitled. Mr White, am I wrong?

**Mr Frank White:** What we're talking about are decisions the head can make under FOI.

**Mr Hope:** Right.

**Mr Frank White:** I guess some of the groups that came forward felt that in terms of disclosure of personal information, if it was a welfare administrator rather than the head—in the municipality the head is the council or someone designated by council, a member of council—it would further the privacy interests of individuals they're representing.

**Mr Sterling:** The court in the case you're talking about in Hastings made a decision which said that the Hastings council didn't have reason to demand this information. I take from the court's ruling, therefore, that the court may have anticipated there would be reasons sometimes when the council should have this private information, and I assume it was for accountability reasons. That would be the only proper use for private information that I could think of, that in some way municipal council wanted to look into an individual case where it had heard there was misappropriation of funds or whatever.

**Mr Frank White:** I think the situation with Hastings county was that it was the welfare administrator who was charged with the responsibility of determining whatever the situation was, not the council. They didn't have any basis in terms of their responsibilities of why it was necessary and proper to obtain this information, because someone else was specifically charged with that responsibility. Now it could be very different in some other situation where, for instance, another statute might be involved, but in this particular one the court ruled there was nothing necessary about obtaining, from the court's point of view, because there was nothing the council was

charged with. They wanted to know and it was nice to know, but they didn't have any responsibility in terms of making a decision. That was that situation, but it was situational in terms of their particular request.

**Mr Sterling:** On the one hand, in my view, you elect people to run the municipality and to collect the taxes and to spend the taxes, so there has to be some way of accounting to them, and I'm reluctant to deny them information. In the purest sense you have to say, "These people are not going to misuse information they get." You trust them etc. We know that doesn't always happen and some people, elected officials, would perhaps misuse that information. I think you have to come somewhere between, and I think what we're doing here is opting for the one where we mistrust the council totally and we don't provide any mechanism for accountability.

**The Vice-Chair:** Mr Sterling, I would remind you that we have dealt with these things.

**Mr Sterling:** Yes, I know, but the two are involved.

**Mr Hope:** Just for Mr Sterling's information, the IROs, which are the income review officers, are going to be the ones charged with the responsibility of making sure that all criteria that a person receiving social assistance—that they're applying to the act, and making sure somebody is not receiving inappropriate funds.

**Mr Sterling:** What if you've got a lousy IRO?

**Mr Hope:** What did you hire the person for?

**Mr Sterling:** But how do you know if you can't look into what he's doing?

**Mr Hope:** You're going to be able to see. He's going to have to report back to council. You're just not going to see the individuals' names who are collecting social services. You will see the report. Most officers, most people who work for municipalities, heads of areas, always make a report to their council, so you're going to know whether it's justified. If he's not doing anything and sitting there, he's going to report that nothing's been done and you're going to question the reality of actually his position working for the corporation.

**Mr Sterling:** But doesn't the case become specific? What happens is that an elected official has a concern about an individual. Somebody's come to them and said, "They're ripping off the system," or whatever it is. Now you're saying that elected official has no right to go and bring up this individual case with this person?

**Mr Hope:** He has the right to bring up the individual case to the person, but the information and the evaluation of the criteria is a matter done by the income review officer, not by the politician. How many politicians know what the GWA is? How many have even read the act? How many have read the regulations?

**Mr Sterling:** I believe the guy who is elected is the guy who, in the end, has to answer. Therefore, I disagree fundamentally with what you're saying.

**Mr Hope:** You still don't have the answer, because in social assistance, the Social Assistance Review Board has the final answer on most. If you don't like a decision that was made by a corporation, it's always referred to the review board. The power being bestowed upon the politician is frivolous for the simple fact that an individ-

ual, if cut off social services, has an opportunity to go before the review officer.

The Chair is going to pound the hammer down now.

**The Vice-Chair:** Yes, I'm going to say that we're all out of order in this discussion.

**Mr Sterling:** Yes, okay.

**Mr Hope:** If we're not in agreement on pulling that whole section out, then move with option A.

**The Vice-Chair:** You've moved to option A?

**Mr Hope:** I'm compromising. There's been a lot of hard work done, the typing of this thing.

**The Vice-Chair:** By the way, I would point out that it's been pointed out to me by legislative counsel that options A and B are rejecting what is in the text and are in effect saying, "Retain the existing privacy provisions." Option A retains the existing privacy provisions. Option B, in effect, if my reading is correct, is saying that not only should you use your existing restrictions, but you should also see if there's a less intrusive way of exchanging information. Am I quite right that you could have option A and B together?

**Ms Swift:** That's correct.

**The Vice-Chair:** They could go together. From a privacy point of view, the most protective is option A and B. I thought I'd point that out.

**Mr Hope:** I want the whole thing taken out. Come on, give me a break.

**The Vice-Chair:** No, you don't want A and B taken—

**Mr Sterling:** I agree with Mr Hope. Take the whole thing out.

**The Vice-Chair:** What about other members of the committee?

**Mrs MacKinnon:** Well, I'm here.

**The Vice-Chair:** Oh, Mrs MacKinnon, yes, you have something to say. I'm sorry; I had forgotten with all this.

**Mrs MacKinnon:** Maybe I should be declaring a conflict of interest. I don't know. I notice in here that you have used Lambton county, and this is—what shall I say?—a very hot topic at home right now; it's awful. I hope that we are going to do whatever it takes to nail this down when it comes to the welfare part of the whole thing.

Mr Sterling is asking about the accountability. This is what I've been called to answer at Lambton county. My response has been and will continue to be that there is—I'm not talking municipal; I'm talking county government because that's where our welfare is administered—the head of the social services department, called the chief administrative officer, and that's where the accountability comes in.

Whatever you do, for goodness' sake, pin this down. It's becoming very difficult for these various councils to seem to grasp the fact that they've got the people there, the head of their social services department, they've got an investigative officer, and then they've got their chief administrative officer, but councils are having a problem because they don't know who they are, and excuse me, but I don't think they have a legitimate reasons to know the names of the people.

**The Vice-Chair:** Mr Hope has moved that the text and options A and B be deleted from the report. All those in favour?

**Mrs MacKinnon:** Is this going to give the protection I'm asking for?

**Mr Hope:** Yes.

**Mr Sterling:** What's the question?

**The Vice-Chair:** The question is on Mr Hope's motion to delete the text and options A and B from the report. All in favour? Opposed? I guess it's carried then.

At this stage, I think the next process, the appeal process, is an appropriate time to adjourn, since we'll have a vote soon in the House. Adjourned.

The committee adjourned at 1751.











## CONTENTS

Wednesday 8 June 1994

**Draft report: Municipal Freedom of Information and Protection of Privacy Act . . . . . M-343**

### STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

**Chair / Président:** Hansen, Ron (Lincoln ND)

**\*Vice-Chair / Vice-Président:** Wessenger, Paul (Simcoe Centre ND)

**\*Dadamo, George** (Windsor-Sandwich ND)

Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)

**\*MacKinnon, Ellen** (Lambton ND)

**\*Mathysen, Irene** (Middlesex ND)

McClelland, Carman (Brampton North/-Nord L)

Morin, Gilles E. (Carleton East/-Est L)

**\*Sterling, Norman W.** (Carleton PC)

Sullivan, Barbara (Halton Centre L)

Sutherland, Kimble (Oxford ND)

Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)

*\*In attendance / présents*

**Substitutions present / Membres remplaçants présents:**

Crozier, Bruce (Essex South/-Sud L) for Mr McClelland

Elston, Murray J. (Bruce L) for Mrs Sullivan

Hope, Randy R. (Chatham-Kent ND) for Mr Paul R. Johnson

Wiseman, Jim (Durham West/-Ouest ND) for Mr Sutherland

**Also taking part / Autres participants et participantes:**

White, Frank, director, freedom of information and privacy branch, Management Board of Cabinet

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** Swift, Susan, research officer, Legislative Research Service















3 1761 11465877 6